

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
89 SOUTH CALIFORNIA ST., SUITE 200  
VENTURA, CA 93001  
(805) 585-1800

Appeal Filed: 3/12/04  
Substantial Issue Found: 4/15/04  
Staff: SLG-V  
Staff Report: 12/16/05  
Hearing Date: 1/12/05



## **STAFF REPORT: APPEAL** **DE NOVO REVIEW**

**LOCAL GOVERNMENT:** County of Santa Barbara

**LOCAL DECISION:** Approval with Conditions

**APPEAL NO.:** A-4-STB-04-035

**APPLICANTS:** Christopher and Kathryn Chase

**APPELLANTS:** Commissioners Wan and Woolley; Bruce Murdock; Rick and Janet Stich; Edward Maguire; and Chris and Kathryn Chase

**PROJECT LOCATION:** 6800 Block of Del Playa Drive, Isla Vista, Santa Barbara County (APNs 075-181-022 and -023)

**PROJECT DESCRIPTION:** Construction of two-story single-family residences on adjacent bluff top lots, with parking for two cars on each lot.

**SUMMARY OF STAFF RECOMMENDATION:** The Commission found that that this appeal raised substantial issue at its April 15, 2004 hearing. Staff recommends that the Commission **approve the proposed project with fourteen (14) special conditions**, including revised plans, assumption of risk, no future shoreline protective device, future development deed restriction, wetland mitigation, long-term wetland management measures, lighting restriction, construction monitoring, drainage and polluted runoff control plan, interim erosion control plans, signage program, operational responsibilities, general deed restriction, and conditions imposed by the local government.

The approximately 5,600 sq. ft. project sites are located on adjacent bluff top lots in Isla Vista on parcels designated as Environmentally Sensitive Habitat (ESH) in the County of Santa Barbara's certified Local Coastal Program. Both lots are zoned for single-family residential, minimum 10,000 sq. ft. lot size (10-R-1). The subject lots are undeveloped, relatively flat and surrounded by four publicly-owned open space parcels to the east and one publicly-owned open space lot to the west. Wetlands are present over most of the site (Exhibit 3). A wetland delineation was conducted on the subject parcels in 1997, indicating that wetland coverage of 61% on Parcel 22 and 48% on Parcel 23. The

wetlands are vernal swales and flats, with the existence of a vernal pool in the area identified as early as the mid-1970s on the Coastal Commission's Coastal Resources Environmentally Sensitive Area maps.

LCP Policy 9-9 requires a 100-foot buffer to be maintained in a natural condition along the periphery of all wetlands. No permanent structures shall be permitted within the wetland or buffer except structures of a minor nature. Because of the size of the parcels, there is no part of the subject sites that would be outside of the required 100-foot wetland buffer. Therefore, application of LCP 9-9, by itself, would require denial of any development on the subject lots because the 100-foot wetland buffer is not feasible under any circumstances.

However, Section 30010 of the Coastal Act provides that the Coastal Act shall not be construed as authorizing the Commission to exercise its power to grant or deny a permit in a manner which will take private property for public use. Outright denial of all residential use on the project site would interfere with reasonable investment-backed expectations and deprive the property of all reasonable economic use.

Consequently, the proposed development would necessarily be approved within the 100-foot wetland buffer in order to provide an economically viable use. Therefore, siting and design alternatives must be considered in order to identify the alternative that can avoid and minimize impacts to the wetland to the greatest extent feasible. In this case, the County-approved project is located on the northern end of the parcels, as close as the edge of the delineated wetland boundary, effectively eliminating the wetland buffer requirement (Exhibit 6). In reliance of this option, to provide a level of development that would not constitute a taking, the County granted variances from setback standards on both parcels to avoid impacts to wetlands.

Staff is recommending approval with a five-foot setback from the wetlands. Application of this requirement would reduce the development footprint to the south, in the rear of the homes. However, as discussed above, the Commission must balance the protection of wetlands with the issue of providing reasonable use of the property. To ensure that the applicants receive an economically viable use of their property while meeting the 5-foot wetland setback, staff recommends approval of a range of additional alternatives with respect to relocation or redesign of the project in which to regain living space. Under a maximum potential buildout scenario, the front yard setbacks could be reduced to three feet on Parcel 22 and five feet on Parcel 23, and the side yard setbacks could be eliminated. Moreover, the applicants may gain additional square footage by constructing a 100% second story development over the ground floor development, rather than the 75% approved by the County. Also, the parking area may be in the representation of a garage rather than a carport and the applicants may redesign their project to have a roof top deck provided that the maximum height limit of 25 feet is not exceeded. These alternatives will provide outdoor/indoor living space similar to nearby single-family residential development, which according to the County's findings, which "ranges from 1,300 to 2,100 square feet of living space."

These modifications would have an adverse effect on protection of visual resources, such as views and community character. In this case, to provide reasonable use of property, the visual policies of the LCP cannot be fully applied. Where there is conflict between protection of wetlands and protection of visual resources, both the LCP and Coastal Act find that the protection of wetlands is of higher priority.

It is important to note that the majority of visual impact will be to private views, rather than public views. Though the development will be visually imposing, the public will have the ability to bypass the development and access the open space and bluff top path located between these parcels and the ocean. Additionally the lots are each 40 feet wide and ocean through-view corridors are present immediately east and west of the properties. The structures will briefly interrupt public views by automobile but are not substantially out of character with the existing built-out Del Playa bluff top.

Therefore, to allow reasonable use of property consistent with Section 30010 of the Coastal Act, there will be unavoidable adverse impacts to wetlands and visual resources. However, as conditioned, the proposed residential development is the minimum necessary to avoid a taking and the impacts to wetlands that cannot be avoided, are mitigated to the maximum extent feasible.

---

## Table of Contents

<b>I. STANDARD OF REVIEW .....</b>	<b>5</b>
<b>II. STAFF RECOMMENDATION .....</b>	<b>5</b>
<b>III. STANDARD CONDITIONS.....</b>	<b>6</b>
<b>IV. SPECIAL CONDITIONS.....</b>	<b>6</b>
1. <i>Revised Plans .....</i>	6
2. <i>Assumption of Risk .....</i>	7
3. <i>No Future Shoreline Protective Device.....</i>	7
4. <i>Future Development Restriction .....</i>	8
5. <i>Wetland Mitigation.....</i>	8
6. <i>Long-Term Wetland Management.....</i>	12
7. <i>Lighting Restriction.....</i>	13
8. <i>Construction Monitoring.....</i>	13
9. <i>Drainage and Polluted Runoff Control Plan .....</i>	14
10. <i>Interim Erosion Control Plans .....</i>	15
11. <i>Signage Program.....</i>	16
12. <i>Operational Responsibilities .....</i>	16
13. <i>Deed Restriction.....</i>	16
14. <i>Conditions Imposed By Local Government.....</i>	17

<b>V. FINDINGS AND DECLARATIONS .....</b>	<b>17</b>
A. BACKGROUND.....	17
B. PROJECT DESCRIPTION.....	18
C. HAZARDS AND SHORELINE PROCESSES .....	21
D. ENVIRONMENTALLY SENSITIVE HABITAT AND WETLANDS .....	28
1. Takings .....	34
2. Wetland Mitigation.....	40
3. Wetland Protection Measures .....	43
E. PUBLIC ACCESS AND VISUAL RESOURCES .....	47
1. Public Access.....	49
2. Visual Resources .....	51
F. WATER QUALITY .....	55
G. CEQA.....	58

---

## EXHIBITS

- Exhibit 1. Vicinity Map
  - Exhibit 2. Parcel Map
  - Exhibit 3. Wetland Delineation
  - Exhibit 4. Fencing & Signage
  - Exhibit 5. Applicants' Proposed Development Footprint
  - Exhibit 6. County-Approved Development Footprint
  - Exhibit 7. 5-ft Wetland Setback
  - Exhibit 8. Potential Maximum Development Footprint
  - Exhibit 9. County Approval with Conditions
  - Exhibit 10. John Dixon Memo Regarding Chase Property Wetland Delineation
  - Exhibit 11. Appeals (Commissioners, Murdock, Maguire, Stich)
  - Exhibit 12. Correspondence
- 

**SUBSTANTIVE FILE DOCUMENTS:** County of Santa Barbara Coastal Development Permits (01CDH-00000-00060, 01CDH-00000-00061, 02VAR-00000-00003, 02VAR-00000-00004, approved 2/24/04); Proposed Final Environmental Impact Report for the Chase Single-Family Dwellings, Santa Barbara County, California (September 2003); Office of County Counsel Memorandum Re: Takings Analysis on Appeal of Chase Single Family Dwellings and Variances (11/21/03); Survey of Chase Property on Del Playa Drive in Isla Vista (Rachel Tierney Consulting, 11/17/03); Plant Surveys and Wetland Delineations for Five Land Parcels, Del Playa Drive, Isla Vista, CA (FLx, May 1997);

## I. STANDARD OF REVIEW

After certification of a Local Coastal Program (LCP), Section 30603 of the Coastal Act provides for appeals to the Coastal Commission of a local government's actions on certain types of coastal development permits (including any new development which occurs between the first public road and the sea, such as the proposed project sites). In this case, the proposed development was appealed to the Commission, which found during a public hearing on April 15, 2004, that a substantial issue was raised.

As a "de novo" application, the standard of review for the proposed development is, in part, the policies and provisions of the County of Santa Barbara Local Coastal Program. In addition, pursuant to Section 30604(c) of the Coastal Act, all proposed development located between the first public road and the sea, including those areas where a certified LCP has been prepared, (such as the project sites), must also be reviewed for consistency with the Chapter 3 policies of the Coastal Act with respect to public access and public recreation. In addition, all Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified LCP as guiding policies pursuant to Policy 1-1 of the LUP.

## II. STAFF RECOMMENDATION

**MOTION:**     *I move that the Commission approve Coastal Development Permit No. A-4-STB-04-035 pursuant to the staff recommendation.*

### **STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### **RESOLUTION TO APPROVE THE PERMITS:**

The Commission hereby approves a coastal development permit for the proposed development on the ground that the development is located between the sea and the first public road nearest the shoreline and will conform with the policies of the certified Local Coastal Program for the County of Santa Barbara and the public access and public recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act since feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment.

### III. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** These permits are not valid and development shall not commence until copies of the permits, signed by the permittee or authorized agent, acknowledging receipt of the permits and acceptance of the terms and conditions, are returned to the Commission office.
2. **Expiration.** If development has not commenced, the permits will expire two years from the date on which the Commission voted on the de novo appeal of the permits. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application(s) for extension of the permit(s) must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any term or condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permits may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permits.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject properties to the terms and conditions.

### IV. SPECIAL CONDITIONS

#### 1. **Revised Plans**

Prior to issuance of the coastal development permit, the applicants shall submit, for the review and approval of the Executive Director, two (2) sets of final revised project plans. The revised final project plans and project description shall reflect the following:

1. Structures, excluding the fence described in item 2 below or decks or patio walkways that preserve the ability to walk around the structure, shall be setback a minimum of five feet from the wetland boundaries delineated in the FLx report dated May 1997, as illustrated in Exhibit 7. Additional square footage may be achieved by increasing the size of second story development on each structure from 75% to 100% of the building footprint and/or by eliminating the side yard setbacks and reducing the front yard setbacks to three feet on Parcel 22 and five feet on Parcel 23.
2. A permanent rear yard fence, a minimum of four feet in height, shall be installed along the boundary of the wetlands between the approved structures and the open space as approximated in Exhibit 4. A permanent split rail fence, maximum four feet in height, shall be installed along the balance of the eastern property line south of the required rear yard fence on Parcel 23, along the

southern property line of Parcels 22 and 23, and on the balance of the western property line south of the rear yard fence on Parcel 22, as indicated in Exhibit 4. The rear yard fencing and split-rail fence shall be installed prior to start of construction to protect the remaining wetland habitat against impacts from construction activities. The fence shall have signs posted, as described in **Special Condition Eleven**, to discourage entry. The minimum distance from ground level to the split-rail fence's first rung shall be 18 inches. Barbed-wire fencing or permanent chainlink fencing shall not be installed between lots or along property boundaries.

## **2. Assumption of Risk**

By acceptance of this permit, the applicants acknowledge and agree, on behalf of itself and all successors and assignees, to the following:

- A. The applicants acknowledge and agree that the site may be subject to hazards from liquefaction, storm waves, surges, erosion, landslide, and flooding.
- B. The applicants acknowledge and agree to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development.
- C. The applicants unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards.
- D. The applicants agree to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

## **3. No Future Shoreline Protective Device**

- A. By acceptance of the permit, the applicants agree, on behalf of itself and all successors and assignees, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit A-4-STB-04-035 including, but not limited to, the construction of the residence(s), garage(s) or carport(s), driveways/patios, and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, landslides, or other natural hazards in the future. By acceptance of this permit, the applicants hereby waive, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235 or the certified LCP.
- B. By acceptance of this permit, the applicants further agree, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this permit, including but not limited to, the residence(s), garage(s) or carport(s), driveways/patio areas, if any government agency has ordered that the

structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

#### **4. Future Development Restriction**

This permit is only for the development described in Coastal Development Permit A-4-STB-04-035. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) and/or Section 35-169.2 of the Coastal Zoning Ordinance shall not apply to the development governed by Coastal Development Permit A-4-STB-04-035. Accordingly, any future structures, future improvements, or change of use to the permitted structures authorized by these permits, including but not limited to, any grading, clearing or other disturbance of vegetation and fencing, other than as provided for in this coastal development permit shall require an amendment to Coastal Development Permit A-4-STB-04-035 from the Commission or shall require additional coastal development permits from the Commission or from the applicable certified local government.

#### **5. Wetland Mitigation**

Prior to issuance of the coastal development permit, the applicants shall submit, for the review and approval of the Executive Director, an Onsite Wetland Enhancement Plan and an Offsite Restoration Plan subject to the following provisions. Said plans shall be prepared by a qualified biologist, ecologist, or resource specialist with experience in the field of restoration ecology, and with a background knowledge of vernal wetlands. The applicants shall provide the resource specialist's qualifications, for the review and approval of the Executive Director, prior to plan development. The Onsite Wetland Enhancement Plan and an Offsite Restoration Plan shall include, at a minimum, the following information:

##### **C. Onsite Wetland Enhancement Plan**

1. The onsite wetland enhancement shall include, at a minimum, the removal of any and all invasive plant species on the site; the removal of non-native plants within the boundary of the delineated wetland (FLx, 1997) and the adjacent open space area(s) on-site; revegetation of disturbed areas with appropriate native species, including areas where invasive and non-native plants were removed; a program to provide formal written notice to the occupant(s) of the wetland protection goals and objectives and statement that any activities, with the exception of maintenance activities listed below, within the wetland are strictly prohibited; and the installation of a permanent split-rail fence and educational and instructional signage to protect the remaining wetland habitat against impacts from humans, vehicles and pets as required in **Special Condition One**.



2. A baseline assessment, including photographs, of the current physical and ecological condition of the onsite wetland boundaries delineated in the 1997 FLx report and the adjacent open space areas on site, including, a description and map of the delineated wetland showing the area and distribution of vegetation types, and a map showing the distribution and abundance of sensitive species.
3. A description of the goals and objectives of the enhancement plan, including, as appropriate, topography, hydrology, vegetation types, sensitive species, and wildlife usage. Documentation of performance standards, which provide a mechanism for making adjustments to the mitigation site when it is determined, through monitoring, or other means that the restoration techniques are not working.
4. A planting palette (seed mix and container plants), planting design, source of plant material, and plant installation. The planting palette shall be made up exclusively of native plants that are appropriate to the vernal wetland habitat and region and that are grown from seeds or vegetative materials obtained from local natural habitats so as to protect the genetic makeup of natural populations. Horticultural varieties shall not be used. The main plant communities that may be included in the plan are vernal pool, vernal swales or flats, and native perennial grassland. Plantings shall be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the revegetation requirements.
5. Sufficient technical detail on the enhancement activities including, at a minimum, a planting program including method and location of exotic species removal, timing of planting, plant locations and elevations on the baseline map, and maintenance timing and techniques.
6. A plan for documenting and reporting the physical and biological "as built" condition of the site within 30 days of completion of the initial enhancement activities. The report shall describe the field implementation of the approved restoration program in narrative and photographs, and report any problems in the implementation and their resolution.
7. Provisions for on-going wetland area maintenance/management for the life of the project. At a minimum, semi-annual maintenance/management activities shall include, as necessary, debris removal, periodic weeding of invasive and non-native vegetation and revegetation consistent with the approved enhancement plan. Maintenance/management activities shall occur within the onsite wetland boundaries delineated in the 1997 FLx report and the adjacent areas on the site.

**D. Onsite Wetland Enhancement -- Long-Term Maintenance Responsible Parties**

8. The applicants shall either: (1) hire a qualified resource specialist to implement the ongoing wetland maintenance program required by this Condition or (2) grant an open space easement, encompassing the entire fenced-off wetland area south of the rear yard fencing (see Exhibit 4), to a qualified public entity or

private non-profit organization acceptable to Executive Director and Santa Barbara County Planning & Development, that agrees to implement the ongoing wetland maintenance/management program required pursuant to Section A.7 of this Condition, as defined in the approved Onsite Wetland Enhancement Plan. The applicants shall provide the resource specialist's qualifications, for the review and approval of the Executive Director, at least two weeks prior to scheduled maintenance OR evidence that an open space easement, including a graphic depiction and legal description of the open space area, has been accepted by a qualified entity skilled at wetland restoration or management that has agreed to implement the ongoing wetland maintenance/management program and that the easement has been recorded by the Santa Barbara County recorder's office.

**E. Offsite Restoration Plan**

9. Identification of the area(s) of disturbed or degraded wetland habitat of equivalent type in the Goleta vicinity that shall be restored sufficient to provide mitigation of the long-term wetland impacts at a ratio of 2:1 for the 6,112 sq. ft. of vernal pool wetland habitat. The total area of created or restored vernal pool wetland habitat required is 12,224 sq. ft.
10. A baseline assessment, including photographs, of the current physical and ecological condition of the proposed restoration site, including, a wetland delineation conducted according to the definitions in the Coastal Act and the Commission's Regulations, a description and map showing the area and distribution of vegetation types, and a map showing the distribution and abundance of sensitive species. Existing vegetation, wetlands, and sensitive species shall be depicted on a map that includes the footprint of the proposed restoration.
11. A description of the goals of the restoration plan, including, as appropriate, topography, hydrology, vegetation types, sensitive species, and wildlife usage. Documentation of performance standards, which provide a mechanism for making adjustments to the mitigation site when it is determined, through monitoring, or other means that the restoration techniques are not working.
12. Documentation of the necessary management and maintenance requirements, and provisions for timely remediation should the need arise.
13. A planting palette (seed mix and container plants), planting design, source of plant material, and plant installation. The planting palette shall be made up exclusively of native plants that are appropriate to the habitat and region and that are grown from seeds or vegetative materials obtained from local natural habitats so as to protect the genetic makeup of natural populations. Horticultural varieties shall not be used. Plantings shall be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the revegetation requirements.

14. Sufficient technical detail on the restoration design including, at a minimum, a planting program including a description of planned site preparation, method and location of exotic species removal, timing of planting, plant locations and elevations on the baseline map, and maintenance timing and techniques.
15. A plan for documenting and reporting the physical and biological “as built” condition of the site within 30 days of completion of the initial restoration activities. The report shall describe the field implementation of the approved restoration program in narrative and photographs, and report any problems in the implementation and their resolution.
16. Documentation that the project will continue to function as a viable restored wetland site, as applicable, over the long term.
17. Documentation that the applicants have obtained all necessary rights from the property owner to access, use and maintain the mitigation site in compliance with all requirements of the restoration plan.

## **F. Monitoring**

1. A Monitoring Program to monitor the Onsite Wetland Enhancement and Offsite Wetland Restoration. Said monitoring program shall set forth the guidelines, criteria and performance standards by which the success of the enhancement and restoration shall be determined. The monitoring programs shall include but not be limited to the following:
  - (a) Interim and Final Success Criteria. Interim and final success criteria shall include, as appropriate: species diversity, total ground cover of vegetation, vegetative cover of dominant species and definition of dominants, wildlife usage, hydrology, and presence and abundance of sensitive species or other individual “target” species.
  - (b) Interim Monitoring Reports. The applicants shall submit, for the review and approval of the Executive Director, on an annual basis, for a period of five (5) years, a written monitoring report, prepared by a monitoring resource specialist indicating the progress and relative success or failure of the enhancement on the site. This report shall also include further recommendations and requirements for additional enhancement/restoration activities in order for the project to meet the criteria and performance standards. This report shall also include photographs taken from predesignated sites (annotated to a copy of the site plans) indicating the progress of recovery at each of the sites. Each report shall be cumulative and shall summarize all previous results. Each report shall also include a “Performance Evaluation” section where information and results from the monitoring program are used to evaluate the status of the enhancement/restoration project in relation to the interim performance standards and final success criteria.
  - (c) Final Report. At the end of the five-year period, a final detailed report on the restoration shall be submitted for the review and approval of the Executive Director. If this report indicates that the enhancement/

restoration project has, in part, or in whole, been unsuccessful, based on the performance standards specified in the restoration plan, the applicant(s) shall submit within 90 days a revised or supplemental restoration program to compensate for those portions of the original program which did not meet the approved success criteria. The revised or supplemental program shall be processed as an amendment to this permit.

- (d) **Monitoring Period and Mid-Course Corrections.** During the five-year monitoring period, all artificial inputs (e.g., irrigation, soil amendments, plantings) shall be removed except for the purposes of providing mid-course corrections or maintenance to insure the survival of the enhancement/restoration site. If these inputs are required beyond the first two years, then the monitoring program shall be extended for every additional year that such inputs are required, so that the success and sustainability of the enhancement/restoration is insured. The enhancement/restoration site shall not be considered successful until it is able to survive without artificial inputs.

#### **G. Implementation**

1. The Onsite Wetland Enhancement and Offsite Restoration activities shall be implemented by qualified biologists, ecologists, or resource specialists who are experienced in the field of restoration ecology within 60 days after the completion of construction of each residence(s). The Executive Director may grant additional time for good cause. The monitoring plan shall be implemented immediately following the enhancement/restoration. The applicants shall provide the resource specialist's qualifications, for the review and approval of the Executive Director, at least two weeks prior to the start of such activities.
2. The Permittee shall undertake development in accordance with the final approved plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission - approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is legally required.

#### **6. Long-Term Wetland Management**

By acceptance of the permit, the applicants agree, on behalf of itself and all successors and assignees, to the following:

1. The rear yard fencing and split-rail fence on the balance of the property lines, as shown in Exhibit 4, shall be installed prior to the start of construction and shall be maintained in good condition for the life of the project. The fences shall be repaired and/or replaced when necessary, in a manner that complies with the Conditions of CDP No. A-4-STB-04-035

2. No grass cutting shall be permitted within the delineated wetland areas except where required for wetland enhancement purposes and as approved in the Onsite Wetland Enhancement Plan.
3. No disking for fire control or any other use shall occur in the wetland or buffer areas.
4. No mosquito control shall be permitted except use of mosquito fish.
5. Invasive plant species shall not be permitted anywhere on the project site(s).
6. No one shall enter the wetland area south of the residences except to carry out the Onsite Wetland Enhancement Plan required by Condition 5 of CDP No. A-4-STB-04-035 or to maintain, repair or replace the fences required by this Condition.

## **7. Lighting Restriction**

- A. Prior to issuance of the coastal development permit, the applicant(s) shall submit two (2) sets of Lighting Plans, for review and approval by the Executive Director, incorporating the following requirements:
  1. Any exterior night lighting installed on the project site shall be of low intensity, low glare design, and shall be hooded to direct light downward onto the subject parcel(s) and prevent spill-over onto adjacent parcels, including public open space areas, and into the wetland habitat. The only outdoor night lighting allowed on the subject parcels is limited to the minimum necessary to light walkways used for entry and exit to the structures, including parking areas on the site. Security lighting attached to the residence and garage shall be controlled by motion detectors. No lighting around the perimeter of the site and no lighting for aesthetic purposes is allowed. **All** exterior lighting, including but not limited to security lighting, shall be limited to fixtures that generate the same or less lumens equivalent to those generated by a 60 watt incandescent bulb, unless a greater number of lumens is authorized by the Executive Director.
  2. The lighting plan shall show the locations of all exterior lighting fixtures and an arrow showing the direction of light being cast by each fixture, the lighting specifications, and the height of the fixtures. The plan shall be designed in particular to avoid lighting impacts to the wetland habitat. All outdoor lighting on the parcel shall comply with the approved Lighting Plans.

## **8. Construction Monitoring**

The applicants shall retain the services of a qualified biologist or environmental resources specialist with appropriate qualifications acceptable to the Executive Director to serve as the biological monitor. The applicants shall provide the biological monitor's qualifications for the review and approval of the Executive Director at least two (2) weeks prior to commencement of project activities. The biological monitor shall oversee the installation of the permanent rear yard fencing and split-rail wetland protection fence at the edge of the permitted construction zone, prior to any construction activities. The

biological monitor shall be present during excavation, exterior construction such as framing and foundation placement, or any grading activities to prevent intrusion into the delineated wetland habitat. The applicants shall cease work should any construction activities adversely impact wetland habitat, on or adjacent to the site(s). In such event, the biological monitor(s) shall direct the applicants to cease work and shall immediately notify the Executive Director. Project activities shall resume only upon written approval of the Executive Director. If significant impacts or damage occur to sensitive habitat or species, the applicants shall be required to submit a revised, or supplemental program to adequately mitigate such impacts. The revised, or supplemental, program shall be processed as an amendment to this coastal development permit.

## **9. Drainage and Polluted Runoff Control Plan**

Prior to the issuance of the coastal development permit, the applicants shall submit for the review and approval of the Executive Director, two (2) sets of final drainage and runoff control plans, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity, and pollutant load of stormwater leaving the developed site. The plan shall be reviewed and approved by a qualified geotechnical engineer to ensure that the design does not represent a threat to the site stability or safety and the consulting biologist preparing the Onsite Wetland Enhancement Plan to ensure that redirection of drainage does not adversely impact on-site or adjacent wetlands. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (a) Selected BMPs (or suites of BMPs) shall be designed to treat or filter stormwater from each runoff event, up to and including the 85<sup>th</sup> percentile, 24-hour runoff event for volume-based BMPs, and/or the 85<sup>th</sup> percentile, 1-hour runoff event, with an appropriate safety factor, for flow-based BMPs.
- (b) Runoff shall be conveyed in a non-erosive manner.
- (c) Energy dissipating measures shall be installed at the terminus of outflow drains.
- (d) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to the onset of the storm season, no later than September 30<sup>th</sup> each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicants/landowners or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicants shall submit a repair and restoration plan to the Executive Director to determine if amendment(s) or new Coastal Development Permit(s) are required to authorize such work.

- (e) There shall be no net reduction in stormwater runoff to the on-site and adjacent wetland complex as delineated in the 1997 FLx report.

#### **10. Interim Erosion Control Plans**

Prior to the issuance of the coastal development permit, the applicants shall submit two (2) sets of interim erosion control plans, prepared by a qualified engineer or specialist, for review and approval by the Executive Director. The interim erosion control plans shall be reviewed and approved by a qualified geotechnical engineer to ensure that the design does not represent a threat to the site stability or safety. The plans shall incorporate the following criteria:

1. The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas, and stockpile areas. The natural areas on the sites shall be clearly delineated on the project site. Prior to any construction activities, the applicants shall install the permanent rear yard fencing which represents the edge of the permitted construction zone. No construction activities, including staging or storage, shall occur within the on-site or adjacent wetland complex as identified in the 1997 FLx report.
2. The plan shall specify that grading shall take place only during the dry season (April 1 – October 31). This period may be extended for a limited period of time if the situation warrants such a limited extension, if approved by the Executive Director. The applicants shall install or construct temporary sediment basins (including debris basins, desilting basins, or silt traps), temporary drains and swales, sand bag barriers, silt fencing, and shall stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes, and close and stabilize open trenches as soon as possible. These erosion control measures shall be required on the project site prior to or concurrent with the initial grading operations and shall be maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site as approved in the final plans, unless removed to an appropriate, approved dumping location either outside of the coastal zone or within the coastal zone to a site permitted to receive fill.
3. The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than thirty (30) days, including but not limited to: stabilization of all stockpiled fill and disturbed soils with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. Straw bales shall not be used. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

4. Storm drain inlets shall be protected from sediment-laden waters by the use of inlet protection devices such as gravel bag barriers, filter fabric fences, block and gravel filters, and excavated inlet sediment traps.

## **11. Signage Program**

Prior to issuance of the coastal development permit, the applicants shall submit two (2) sets of signage plans, for the review and approval of the Executive Director, indicating the location, size, design, and content of all signs to be installed. All signs shall be installed prior to the start of construction, concurrent with the installation of the split-rail wetland protection fence. A minimum of four signs shall be placed in conspicuous locations along the split-rail fence, as shown in Exhibit 4. The language shall notify the public that the area contains a sensitive wetland habitat and that activities or entrance into the fenced area is not allowed. These signs shall be maintained in good condition for the life of the development and, when necessary, shall be replaced with new signs that comply with the plans approved pursuant to this Condition.

## **12. Operational Responsibilities**

It shall be the applicants' responsibility to assure compliance with the following provisions during the life of the development:

- (a) No construction materials, debris, or waste shall be placed or stored where it may be subject to erosion and dispersion; nor shall such materials be placed or stored within the on-site or adjacent wetland complex as identified in the 1997 FLx report.
- (b) Any and all debris resulting from construction activities shall be removed from the site by close of the same day.
- (c) Equipment shall not be operated or stored south of the rear yard fencing.
- (d) During construction, washing of concrete trucks, paint, equipment, or similar activities shall occur only in areas where polluted water and materials can be contained for subsequent removal from the site. Wash water shall not be discharged to the storm drains, street, drainage ditches, creeks, or wetlands. Areas designated for washing functions shall be at least 100 feet from any storm drain, water body or sensitive biological resources. The location(s) of the washout area(s) shall be clearly noted at the construction site with signs. In addition, construction materials and waste such as paint, mortar, concrete slurry, fuels, etc. shall be stored, handled, and disposed of in a manner which prevents storm water contamination.
- (e) The garage or carports must be kept clear and available for parking for two cars.

## **13. Deed Restriction**

Prior to the issuance of the coastal development permit, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the applicants have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that



restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a graphic depiction and legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

#### **14. Conditions Imposed By Local Government**

This action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act.

## **V. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

### **A. BACKGROUND**

The project sites are located on two adjacent blufftop properties on the south side of the 6800 Block of Del Playa Drive in Isla Vista, a community of unincorporated Santa Barbara County (Exhibits 1 and 2). Each lot is approximately 5,600 sq. ft., 40 ft. in width and 140 ft. in length. Both lots are zoned 10-R-1 (Single Family Residential 10,000 sq. ft. minimum lot size). The subject parcels are undeveloped, relatively flat and are covered with low-lying vegetation. Wetlands are present over most of the site(s) (Exhibit 3). The vernal wetlands have relatively flat topography with shallow depressions and low swales, and include native wetland vegetation.

Two public trails are adjacent to the sites: one running parallel to the easternmost project parcel (Parcel 23) from the street to the bluff top that connects to another trail that runs east-west along the bluff for some distance seaward of the subject parcels and extending beyond the subject parcels. Four parcels east and one parcel west of the subject sites are vacant open space parcels, also part of the vernal wetland complex, owned by either Isla Vista Recreation and Park District or the County of Santa Barbara.

The 75-year bluff setback required for the proposed development is approximately 42 feet. The County-approved footprint of each house would be setback approximately 94-105 feet from the property line nearest the ocean. That property line is approximately 47

feet from the bluff top for a total setback of 141-152 feet from the proposed structures to the bluff top. Recently, several nearby properties along Del Playa Drive suffered bluff failure and residential structures were determined to be uninhabitable (red-flagged) by the County forcing occupants to evacuate the structures.

On September 15, 2003 the Zoning Administrator approved the construction of two-story single-family residences on two adjacent parcels. The Zoning Administrator's action was appealed to the Board of Supervisors by four appellants. On February 24, 2004, the County Board of Supervisors approved two Coastal Development Permits and associated variances (01CDH-00000-00060, 01CDH-00000-00061, 02VAR-00000-00003, 02VAR-00000-00004) for the construction of two-story single-family residences on adjacent bluff top lots: construction of a 1,012 sq. ft. single-family dwelling & 400 sq. ft. carport on Parcel 22 and construction of a 1,220 sq. ft. single family dwelling, 400 sq. ft. carport, and 216 sq. ft. of first floor deck area on Parcel 23. Commission staff received the notice of final action for these projects on March 9, 2004. A 10 working day appeal period was set and notice provided beginning March 10, 2004 and extending to March 23, 2004.

An appeal of the County's action was filed by: (1) Commissioners Woolley and Wan on March 18, 2004; (2) Bruce Murdock on March 12, 2004; (3) Edward Maguire on March 18, 2004; (4) Rick and Janet Stich on March 22, 2004; and (5) Chris and Kathryn Chase on March 22, 2004, during the appeal period. The appeals are attached as Exhibit 11 to this report. Commission staff notified the County, the applicants, and all interested parties that were listed on the appeals and requested that the County provide its administrative record for the permit. The administrative record was received on March 19, 2004.

On April 15, 2004, the Commission found that the appellants' contentions raised substantial issue with regard to the consistency of the approved projects with the wetlands, environmentally sensitive habitat, water quality, and visual resources standards of the certified Local Coastal Program. The Commission further found that the Chase's appeal did not raise substantial issue because the appellant's contentions did not meet the grounds for an appeal of a CDP to the Commission.

## **B. PROJECT DESCRIPTION**

### Project Proposed By Applicants

The applicants proposed development of a two-story, 1,797 sq. ft. residence on each of two legal non-conforming lots located on the coastal bluff along Del Playa Drive in Isla Vista. Each residence would have an approximately 500 sq. ft. garage and 1,300 sq. ft. of living space (800 sq. ft. on the first floor and 500 sq. ft. on the second floor). Each dwelling would include an approximately 390 sq. ft. raised wood deck, and approximately 2,920 sq. ft. of the southern portion of each lot would remain undisturbed. The applicants requested a variance for each structure to extend into the 20 foot front

yard setback. Under this scenario, approximately 1,100 sq. ft. of wetland resources would be filled.

#### Project Approved by Zoning Administrator

The project approved by the Zoning Administrator included a revised project that reduced the footprint of the development on each parcel by 100 sq. ft., achieved by reducing the size of the garage. The Zoning Administrator approval included approximately 400 sq. ft. garage and approximately 1,400 sq. ft. of living space (800 sq. ft. on the first floor and 600 sq. ft. on the second floor). Both development footprints approved by the Zoning Administrator would reduce impacts to wetland resources, with Parcel 23 avoiding the delineated wetland altogether. The project included a side yard variance on Parcel 23 to permit design flexibility on that parcel, but without increasing the square footage of the development footprint or the maximum allowable square footage for the dwelling. The final development footprints for both parcels were to be determined in consultation with a County-approved biologist with expertise in wetland biology. This decision was appealed to the Board of Supervisors by Bruce Murdock; Edward Maguire; Rick and Janet Stich; and Chris & Kathryn Chase.

#### Board of Supervisors Appeal and Decision

The Board held hearings on the appeals and received evidence with respect to each appeal. After receiving public testimony, the Board directed staff to examine the feasibility of further restricting the development footprint on the parcels, avoiding encroachment of the delineated wetland entirely while allowing for more development flexibility in order to allow for economically feasible use of the properties. The results of the Board of Supervisor's hearings represent the final County action with a revised project as below:

#### Parcel 22

On Parcel 22, the County approved construction of a 1,012 sq. ft., two-story single-family dwelling with 400 sq. ft. carport. Due to a larger delineated wetland area on Parcel 22, the first floor development footprint would be 807 sq. ft., consisting of a maximum of 407 sq. ft. of living space and a 400 sq. ft. carport. The County restricted the second story to a maximum of 75% of the first floor area, or 605 sq. ft. This would allow for 1,012 sq. ft. of total living area. No first floor decks would be permitted. The development footprint would be located at the northern end of the parcel, entirely outside of the delineated wetland area. A front-yard and side yard setback variance would also be granted allowing the structure to be built with a 5-foot front yard setback, an eliminated western boundary setback, and a three-foot eastern side yard setback.

The foundation would be of raised floor construction with a minimum of 18" crawl space on caissons or piles. Grading is estimated at approximately 87 cubic yards of cut and 87 cubic yards of fill. Retaining walls of up to two feet in height would be installed according to building codes. Fencing approximately, but no higher than, six feet high would be installed at the east property line for the length of the dwelling. In addition, an

approximately four-foot high split rail fence would be built on the balance of the property lines, in accordance with a wetland mitigation plan approved by the County. Two parking spaces would be provided within the attached carport. Water would be obtained from Goleta Water District and the residence would be connected to the Goleta West Sanitary District sewer system.

The Coastal Development Permit was approved subject to 22 project specific conditions (see Exhibit 9), including the following: conformance with final approved plans, construction timing and best management practices; location of development footprint and second story limitations; Board of Architectural Review approval; design standards such as building materials, landscaping plan, driveways, color, and fencing; exterior night lighting; offsite wetland mitigation; Onsite Wetland Protection Plan, requirement for caisson foundation; recordation of open space easement for the undeveloped remainder of the project parcel; long-term wetland protection measures; interim erosion control measures; permeable surfaces; runoff collection; water conservation; Revegetation and Restoration Plan for areas outside of the defined wetland/vernal pool complex; and fencing design for wildlife movement.

### Parcel 23

On Parcel 23, the County approved construction of a 1,220 sq. ft., two-story single-family dwelling with 400 sq. ft. carport. The first floor development footprint would be 926 sq. ft., consisting of 526 sq. ft. of living space and a 400 sq. ft. carport. The County restricted the second story to a maximum of 75% of the first floor area, or 694 sq. ft. This would allow for 1,220 sq. ft. of total living area. A first floor deck of approximately 216 sq. ft. would also be permitted. The development footprint would be located at the northern end of the parcel, entirely outside of the delineated wetland area. A front and western side yard setback variance would also be granted allowing the structure to be built with a 12-foot front yard setback, a 2-foot western side yard setback, and a standard 5-foot eastern side yard setback. While the County's final approval reduced the first floor living area from the 800 sq. ft. (as approved by the Zoning Administrator), to 526 sq. ft., it added authorization for a 216 sq. ft. first story deck.

The foundation would be of raised floor construction with a minimum of 18" crawl space on caissons or piles. Grading is estimated at approximately 87 cubic yards of cut and 87 cubic yards of fill. Retaining walls of up to two feet in height would be installed according to building codes. Fencing approximately, but no higher than, six feet high would be installed at the east side property line for the length of the dwelling. In addition, an approximately four-foot high split rail fence would be built on the balance of the property lines, in accordance with a wetland mitigation plan approved by the County. Two parking spaces would be provided within the attached carport. Water would be obtained from Goleta Water District and the residence would be connected to the Goleta West Sanitary District sewer system.

The Coastal Development Permit was approved subject to 22 project specific conditions (see Exhibit 9), including the following: conformance with final approved plans, construction timing and best management practices; location of development footprint

and second story limitations; Board of Architectural Review approval; design standards such as building materials, landscaping plan, driveways, color, and fencing; exterior night lighting; offsite wetland mitigation; Onsite Wetland Protection Plan, requirement for caisson foundation; recordation of open space easement for the undeveloped remainder of the project parcel; long-term wetland protection measures; interim erosion control measures; permeable surfaces; runoff collection; water conservation; Revegetation and Restoration Plan for areas outside of the defined wetland/vernal pool complex; and fencing design for wildlife movement.

## **C. HAZARDS AND SHORELINE PROCESSES**

LCP Policy 1-1, incorporating Section 30253 of the Coastal Act states, in part, that new development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.***
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.***

LCP Policy 3-1 states, in part:

***Seawalls shall not be permitted unless the County has determined that there are no other less environmentally damaging alternatives reasonably available for protection of existing principal structures. The County prefers and encourages non-structural solutions to shoreline erosion problems, including beach replenishment, removal of endangered structures and prevention of land divisions on shorefront property subject to erosion; and, will seek solutions to shoreline hazards on a larger geographic basis than a single lot circumstance. . . .***

LCP Policy 3-4 states:

***In areas of new development, above-ground structures shall be set back a sufficient distance from the bluff edge to be safe from the threat of bluff erosion for a minimum of 75 years, unless such a standard will make a lot unbuildable, in which case a standard of 50 years shall be used. The County shall determine the required setback. A geologic report shall be required by the County in order to make this determination. At a minimum, such geologic report shall be prepared in conformance with the Coastal Commission's adopted Statewide Interpretive Guidelines regarding "Geologic Stability of Blufftop Development". (See also Policy 4-5 regarding protection of visual resources.)***

LCP Policy 3-5 states:

***Within the required blufftop setback, drought-tolerant vegetation shall be maintained. Grading, as may be required to establish proper drainage or to install landscaping, and minor improvements, i.e., patios and fences that do not impact bluff stability, may be permitted. Surface water shall be directed away from the top of the bluff or be handled in a manner satisfactory to prevent damage to the bluff by surface and percolating water.***

LCP Policy 3-6 states:

***Development and activity of any kind beyond the required blufftop setback shall be constructed to insure that all surface and subsurface drainage shall not contribute to the erosion of the bluff face or the stability of the bluff itself.***

LCP Policy 3-7 states:

***No development shall be permitted on the bluff face, except for engineered staircases or accessways to provide beach access, and pipelines for scientific research or coastal dependent industry. Drainpipes shall be allowed only where no other less environmentally damaging drain system is feasible and the drainpipes are designed and placed to minimize impacts to the bluff face, toe, and beach. Drainage devices extending over the bluff face shall not be permitted if the property can be drained away from the bluff face.***

LCP Policy 3-8 states:

***Applications for grading and building permits, and applications for subdivision shall be reviewed for adjacency to threats from, and impacts on geologic hazards arising from seismic events, tsunami runup, landslides, beach erosion, or other geologic hazards such as expansive soils and subsidence areas. In areas of known geologic hazards, a geologic report shall be required. Mitigation measures shall be required where necessary.***

LCP Policy 3-14 states:

***All development shall be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions and be oriented so that grading and other site preparation is kept to an absolute minimum. Natural features, landforms, and native vegetation, such as trees, shall be preserved to the maximum extent feasible. Areas of the site which are not suited for development because of known soil, geologic, flood, erosion or other hazards shall remain in open space.***

LCP Policy 3-16 states:

***Sediment basins (including debris basins, desilting basins, or silt traps) shall be installed on the project site in conjunction with the initial grading operations and maintained throughout the development process to remove sediment from runoff waters. All sediment shall be retained on site unless removed to an appropriate dumping location.***

LCP Policy 3-17 states:

***Temporary vegetation, seeding, mulching, or other suitable stabilization method shall be used to protect soils subject to erosion that have been disturbed during grading or development. All cut and fill slopes shall be stabilized immediately with planting of native grasses and shrubs, appropriate nonnative plants, or with accepted landscaping practices.***

LCP Policy 3-18 states:

***Provisions shall be made to conduct surface water to storm drains or suitable watercourses to prevent erosion. Drainage devices shall be designed to accommodate increased runoff resulting from modified soil and surface conditions as a result of development. Water runoff shall be retained on-site whenever possible to facilitate groundwater recharge.***

LCP Policy GEO-GV-3 of the Goleta Community Plan states:

***Where feasible and where consistent with Local Coastal Plan Policies relocation of structures threatened by bluff retreat shall be required for development on existing legal parcels, rather than installation of coastal protection structures.***

As stated above, Policy 3-8 of the LCP requires that all proposed development located in or adjacent to areas subject to geologic hazards or beach erosion shall be reviewed to determine any potential impacts of such development. In addition, Section 30253 of the Coastal Act, which has been included in the certified LCP as a guiding policy, requires that new development minimize risks to life and property in areas of high geologic or flood hazards and assure structural stability and integrity. LCP Policy 3-4 requires new development to be set back a sufficient distance from the bluff edge to be safe from the threat of bluff erosion for a minimum of 75 years. Furthermore, Policy 3-14 of the LCP requires development to preserve natural features, landforms to the maximum extent feasible. Policy 3-14 also states that those areas of the sites "which are not suited for development because of known soil, geologic, flood, erosion or other hazards shall remain in open space."

The proposed development includes the construction of two single-family residences on two adjacent 5,600 sq. ft. blufftop lots. The subject parcels have a relatively flat topography with shallow depressions and low swales. The County's Initial Study (Santa Barbara County, No Date) indicated that the soils on the sites were sandy clay loams or clay loams present in the upper soil horizon above about 6 inches, and clay mostly occurred below that level. These soil conditions have lead to the relatively impermeable conditions at the site helping to form the wetland and vernal pool habitats. These clay soils are considered stable and relatively non-expansive.

The Initial Study further states:

***Because the project sites are on the coastal bluff, a sea cliff retreat setback line must be established. A setback retreat of 75 feet has been established as the standard. Based on a survey performed in 1926 when the property was subdivided, the general rate of retreat for the two subject parcels has been about 25-30 feet in the 70 years between 1926 and 1996 which is approximately 5 inches per year. For purposes of analysis, a conservative sea cliff retreat rate has been established at this site of 0.56 feet/year. A 75-year setback would be 42 feet.***

The County-approved footprint of each house would be setback approximately 94-105 feet from the property line nearest the ocean. That property line is approximately 47 feet from the bluff top for a total setback of 141-152 feet from the proposed structures to the bluff top, well above the required 42 ft setback.

Though the proposed structures would be located a significant distance from the recognized 75-year bluff setback, the Commission recognizes that development, even as designed and constructed to incorporate all recommendations of qualified geotechnical engineers, may still involve the taking of some risk. Bluff top development, such as this, is inherently subject to risk due to the geologic instability of bluffs over time. When development in areas of identified hazards is proposed, the Commission

considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use the subject property.

Though the location of the proposed structures on the subject site may presently be feasible from a geologic point of view, it is not possible to completely predict what conditions the proposed residence may be subject to in the future. Because of the inherent risk due to the geologic instability of bluffs over time, further improvements such as protective structures, may eventually be deemed necessary to ensure stability in the future due to instability and erosion.

The proper application of the maximum feasible setback from the bluff edge is a primary means by which the construction of seawalls can be avoided for the protection of development on erodible bluff top slopes. Although no site-specific information regarding the geologic stability of the subject sites was submitted by the applicants, the Commission notes (based on available information in the "Hazards" section of the County's LCP and reports previously submitted for projects along this stretch of bluff in Isla Vista) that the proposed development is located in an area that has been historically subject to an unusually high amount of natural hazards including severe beach erosion from storm waves and general bluff erosion.

Development located along the shoreline, such as the proposed project, is subject to inherent potential hazard from storm generated wave damage. The El Nino storms recorded in 1982-1983 caused high tides of over seven feet, which were combined with storm waves of up to 15 feet. The severity of the 1982-1983 El Nino storm events is often used to illustrate the extreme storm event potential of the California coast. The Commission notes that the Santa Barbara County coast has historically been subject to substantial damage as the result of storm and flood occurrences. In fact, for over 20 years, the County has administered a program of annual inspections and evaluations of bluff-top properties in Isla Vista due to the erosion rate of these bluffs and potential hazards posed to development situated on them and to members of the public using the beach below. As part of this program, the County has required that individual structures which are actually threatened by bluff erosion be either supported by caisson foundations, or cut-back or relocated away from the edge of the bluff-top, to avoid public safety hazards and extend the useful and safe life of the threatened structure. As of 1999, at least 28 structures had been modified to include caisson foundations and over six structures had been cut-back, relocated, or built with a 75-years bluff set-back. As previously described, several nearby properties along Del Playa Drive suffered bluff failure and structures were red-flagged by the County forcing occupants to evacuate.

In addition, due to the high rate of bluff erosion in Isla Vista, there was previously a permit approved by the County for the construction of a timber-pile seawall at the base of the coastal bluff fronting this unincorporated residential community of Isla Vista. Incidentally, although a majority of that project would have been situated seaward of the mean high tide line, which is generally located at the toe of the coastal bluff and would have, therefore, been located on state tidelands or public trust lands within the Coastal Commission's area of retained original permit jurisdiction under Section 30519(b) of the



Coastal Act, no application was made to the Coastal Commission for the project. Although the County's approval of the permit was ultimately appealed to and then denied at the de novo review hearing in 1999 by the Commission, the timber seawall under that permit would have been comprised of four non-contiguous segments totaling approximately 2,200 linear feet, and would have extended seven feet above grade and seven feet below grade. Two of the eight ends of the four segments would have connected to existing seawalls. The seawall would have extended across all of the privately and publicly owned properties on the south (ocean) side of Del Playa Drive. This previously proposed seawall, which was not approved, was intended to reduce the rate of coastal bluff retreat caused by wave action at the base of the coastal bluff affecting approximately 114 residential units.

Thus, ample evidence exists that bluff top development located on the seaward side of Del Playa Drive in Isla Vista, including the project sites, is subject to an unusually high degree of risk due to storm waves and surges, high surf conditions, and erosion. As such, the Commission notes that any new development that is permitted on the subject sites must be designed and constructed in a manner that ensures geologic and structural stability and must minimize hazards consistent with Policy 3-1, 3-4, 3-5, 3-6, 3-7, 3-8, and 3-9 of the LCP and Section 30253 of the Coastal Act, which has been included in the certified LCP.

The County has submitted information supporting the adequacy of the bluff top setbacks required and implemented by the applicants for the proposed residences. Evidence submitted by the County to support the adequacy of an approximate 42 foot bluff top setback for the proposed residences is adequate to meet the requirement under LCP Policy 3-4 that structures be "set back a sufficient distance from the bluff edge to be safe from the threat of bluff erosion for a minimum of 75 years." Further, the standard set forth in LCP Policy 3-4 reduces the potential requirement for bluff stabilization measures or shoreline armoring to protect the bluff in the future and aids in reducing threats from geologic hazard, as required by LCP Policy 3-8 and Section 30253 of the Coastal Act, included in the certified LCP. Given the history of recent bluff failures along Del Playa Drive, however, the increased setback required by the County and Special Condition One (to protect wetland resources), also serves as added protection against damage to the structures from future potential bluff failure.

However Section 30253 of the Coastal Act requires that new development minimize risk to life and property in areas of high geologic, flood, and fire hazard, and to assure stability and structural integrity. Coastal bluffs, such as the one located on the subject sites, are unique geomorphic features that are characteristically unstable. By nature, coastal bluffs are subject to erosion from sheet flow across the top of the bluff and from wave action at the base of the bluff. In addition, due to their geologic structure and soil composition, these bluffs are susceptible to surficial failure, especially with excessive water infiltration.

Notwithstanding the projects' consistency with the required setbacks and geologic policies of the County's LCP, the Commission nevertheless finds that coastal bluff

erosion is a dynamic, long-term process and that no structure situated on a coastal bluff, particularly a bluff exposed to wave attack at the beach elevation, can be completely free of hazard. Therefore, the Commission finds it necessary to impose **Special Condition Two (2)**, assumption of risk, to ensure that the applicants understand the hazards involved in undertaking development on parcels located along a bluff above a beach, and that the applicants agree on behalf of itself and all successors and assignees to assume the risk from such development and to indemnify the Commission, its employees, and agents from all liability associated with proceeding with such development despite such unmitigable hazards.

The Commission notes that while the location of the proposed structures on the subject sites may presently be feasible from a geologic point of view, in order to maintain these structures, further improvements such as concrete block walls and/or other protective structures, may eventually be necessary to ensure slope stability in the future due to instability and erosion. In the case of the proposed projects, the applicants do not propose the construction of any shoreline protective device to protect the proposed development. However, many beaches and bluffs in Santa Barbara County have experienced extreme erosion and scour during severe storm events, such as the El Nino storms. It is not possible to completely predict what conditions the proposed residences and accessory development may be subject to in the future.

Though no shoreline protective device is proposed as part of this project, the Commission notes that the construction of a shoreline protective device or devices on the proposed project sites would result in potential adverse effects to coastal processes, shoreline sand supply, the public's beach ownership interests, and public access. First, changes in the shoreline profile, particularly changes in the slope of the profile, which result from reduced beach width, alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area of public property available for public use. The second effect on access is through a progressive loss of sand, as shore material is not available to nourish the bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore, where they are no longer available to nourish the beach. The effect of this on the public is, again, a loss of area between the mean high water line and the actual water. Third, shoreline protective devices, such as revetments and bulkheads, cumulatively affect public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline, eventually affecting the profile of a public beach. Fourth, if not sited landward in a location that insures that the revetment is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate the wave's energy. Finally, revetments and bulkheads interfere directly with public access by their occupation of beach area that will not only be unavailable during high tide and severe storm events but also potentially throughout the winter season.

In addition, the Commission notes that LCP Policy 3-1 allows for the construction of a shoreline protective device when necessary to protect existing principal structures when there are no other less environmentally damaging alternatives reasonably available. The Commission further notes that the approval of a shoreline protective device to protect new residential development, such as the proposed projects, would not be required by Section 30235 of the Coastal Act. The construction of a shoreline protective device to protect a new residential development would conflict with Section 30253 of the Coastal Act, incorporated into the County's LCP, which states that new development shall neither create nor contribute to erosion or geologic instability of the project sites or surrounding area.

If seawalls or shoreline protection devices were erected on these sites, there would be a direct impact on lateral public beach access opportunities due to the progressive narrowing of the beach resulting from the presence of a seawall. One seawall (Norris/Murphy) constructed in Isla Vista in 1979 has already resulted in the narrowing and almost complete disappearance of the beach directly in front of the seawall, as erosion on either side of the seawall has caused the bluff up and downcoast from the seawall to retreat, creating an artificial promontory which juts out into the active surf-zone. As the Commission found in the appeal and de novo denial of a permit for another Isla Vista seawall, mentioned previously, and as stated in the reports submitted pursuant to that project, the western end of Isla Vista Beach is generally narrower than the eastern end, and currently there is limited access toward the western end during periods of high tide, particularly during the winter months when the sand beach exhibits a winter beach profile (i.e., lower and narrower accumulation of sand on the wave cut platform.) Furthermore, as noted above, the effects of the Norris/Murphy seawall provides confirmation of the effects of seawalls and shoreline protective devices on lateral public access in Isla Vista.

In approving the proposed development, the County did not condition the proposed development to avoid the construction of a seawall or shoreline protective device in the future should the proposed development become threatened by bluff erosion and retreat. As a result, in order to ensure that the proposed project is consistent with the policies of the County LCP, including Section 30253 of the Coastal Act incorporated therein, and to ensure that the proposed project does not result in future adverse effects to coastal processes, **Special Condition Three (3)** in conjunction with **Special Condition Thirteen (13)** require the applicants to record a deed restriction that would prohibit the applicants, or future landowners, from constructing a shoreline protective device or devices for the purpose of protecting any of the development approved under these applications.

Additionally, the Commission finds that controlling and diverting run-off in a non-erosive manner from the proposed structures, impervious surfaces, and building pad will minimize erosion and add to the geologic stability of the project sites. To ensure that adequate drainage and erosion control are included in the proposed developments the Commission requires the applicants to submit drainage and interim erosion control plans certified by a consulting geotechnical engineer, as specified in **Special**

**Conditions Nine (9) and Ten (10)** in compliance LCP Policy 3-18. Special Condition 9 requires the applicants to maintain a functional drainage system at the subject sites to insure that run-off from the project sites is diverted in a non-erosive manner to minimize erosion at the sites for the life of the proposed developments. Should the drainage system of the project sites fail at any time, the applicants will be responsible for any repairs or restoration of eroded areas as consistent with the terms of Special Condition 9.

Finally, future developments or improvements to the property have the potential to create significant adverse geologic hazards and impacts on these bluff top lots. As a result, it is necessary to ensure that future developments or improvements normally associated with a single family residence or accessory development, which might otherwise be exempt, be reviewed by the Commission and/or the County of Santa Barbara or applicable local government, for compliance with the geologic and site stability policies of the LCP. As a result, **Special Condition Four (4)** in combination with **Special Condition Thirteen (13)** requires a future improvements deed restriction, to ensure that the Commission and/or County of Santa Barbara, or applicable local government, will have the opportunity to review future projects for compliance with the LCP and Coastal Act and to ensure that any proposal is designed to minimize geologic hazards and impacts and/or that appropriate mitigation measures are included in the project.

Therefore, for reasons set forth above, the Commission finds that the proposed development, as conditioned, is consistent with the requirements of the policies and zoning ordinances of the County's LCP and with Section 30253 of the Coastal Act, as included within the LCP as a guidance policy.

## **D. ENVIRONMENTALLY SENSITIVE HABITAT AND WETLANDS**

LCP Policy 1-1, incorporating Section 30231 of the Coastal Act states:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

LCP Policy 1-1, incorporating Section 30233 of the Coastal Act states:

*(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

*(I) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*

**(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.**

**(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.**

**(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.**

**(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.**

**(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.**

**(7) Restoration purposes.**

**(8) Nature study, aquaculture, or similar resource dependent activities.**

**(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.**

**(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.**

**(d) Erosion control and flood control facilities constructed on water courses can impede the movement of sediment and nutrients which would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for such purposes are the method of placement, time of year of placement, and sensitivity of the placement area.**

LCP Policy 1-1, incorporating Section 30240 of the Coastal Act states:

***(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.***

***(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.***

LCP Policy 1-2 states:

***Where policies within the land use plan overlap, the policy which is most protective of coastal resources shall take precedence.***

LCP Policy 2-11 states:

***All development, including agriculture, adjacent to areas designated on the land use plan or resource maps as environmentally sensitive habitat areas, shall be regulated to avoid adverse impacts on habitat resources. Regulatory measures include, but are not limited to, setbacks, buffer zones, grading controls, noise restrictions, maintenance of natural vegetation, and control of runoff.***

LCP Policy 3-19 states:

***Degradation of the water quality of groundwater basins, nearby streams, or wetlands shall not result from development of the site. Pollutants, such as chemicals, fuels, lubricants, raw sewage, and other harmful waste, shall not be discharged into or alongside coastal streams or wetlands either during or after construction.***

LCP Policy 9-9 states:

***A buffer strip, a minimum of 100 feet in width, shall be maintained in natural condition along the periphery of all wetlands. No permanent structures shall be permitted within the wetland or buffer area except structures of a minor nature, i.e., fences, or structures necessary to support the uses in Policy 9-10.***

***The upland limit of wetland shall be defined as: 1) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover; or 2) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or 3) in the case of wetlands without vegetation or soils, the boundary between land that is flooded or saturated at some time during years of normal precipitation and land that is not.***

***Where feasible, the outer boundary of the wetland buffer zone should be established at prominent and essentially permanent topographic or manmade features (such as bluffs, roads, etc.). In no case, however, shall such a boundary be closer than 100 feet from the upland extent of the wetland area, nor provide for a lesser degree of environmental protection than that otherwise required by the plan. The boundary definition shall not be construed to prohibit public trails within 100 feet of a wetland.***

LCP Policy 9-10 states:

***Light recreation such as bird-watching or nature study and scientific and educational uses shall be permitted with appropriate controls to prevent adverse impacts.***

LCP Policy 9-11 states:

***Wastewater shall not be discharged into any wetland without a permit from the Regional Water Quality Control Board finding that such discharge improves the quality of the receiving water.***

LCP Policy 9-13 states:

***No unauthorized vehicle traffic shall be permitted in wetlands and pedestrian traffic shall be regulated and incidental to the permitted uses.***

LCP Policy 9-14 states:

***New development adjacent to or in close proximity to wetlands shall be compatible with the continuance of the habitat area and shall not result in a reduction in the biological productivity or water quality of the wetland due to runoff (carrying additional sediment or contaminants), noise, thermal pollution, or other disturbances.***

LCP Policy 9-19 states:

***No mosquito control activity shall be carried out in vernal pools unless it is required to avoid severe nuisance.***

LCP Policy 9-20 states:

***Grass cutting for fire prevention shall be conducted in such a manner as to protect vernal pools. No grass cutting shall be allowed within the vernal pool area or with a buffer zone of five feet or greater.***

LCP Policy 9-21 states:

***Development shall be sited and designed to avoid vernal pool sites as depicted on the resource maps.***

Section 30107.5 and Article II, Section 35-58 of the certified LCP state:

***“Environmentally sensitive area” means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.***

Sec. 35-53. Overlay District Designations and Applicability. (*in relevant part*)

***...If any of the provisions of the overlay district conflict with provisions of the zoning district regulations, the provisions which are most restrictive shall govern... The provisions of the ESH Overlay District are more restrictive than any base zone district and therefore the provisions of the ESH shall govern over the regulations of any base zone or other overlay district.***

Article II, Sec. 35-97.7, Conditions on Coastal Development Permits in ESH, states:

***A coastal development permit may be issued subject to compliance with conditions set forth in the permit which are necessary to ensure protection of the habitat area(s). Such conditions may, among other matters, limit the size, kind, or character of the proposed work, require replacement of vegetation, establish required monitoring procedures and maintenance activity, stage the work over time, or require the alteration of the design of the development to ensure protection of the habitat. The conditions may also include deed restrictions and conservation and resource***

***easements. Any regulation, except the permitted or conditionally permitted uses, of the base zone district may be altered in furtherance of the purpose of this overlay district by express condition in the permit.***

Sec. 35-71.7. R-1 Single-Family Residential Setbacks for Buildings and Structures(*in relevant part*):

***1. Front: Fifty (50) feet from the centerline and twenty (20) feet from the right-of-way line of any street...***

***2. Side: On each side of the lot, ten percent of the width of the lot except:***

***a. for lots zoned 2-E-1 [minimum 2 acre] or less, in no case shall the required side yard be less than five (5) feet nor more than ten (10) feet...***

***3. Rear: Twenty-five (25) feet or fifteen (15) feet if the rear yard abuts a permanently dedicated open space or a street to which access has been denied as part of an approved subdivision or other approved development permit.***

LCP Policy BIO-GV-2 of the Goleta Community Plan states:

***Environmentally Sensitive Habitat (ESH) areas and Riparian Corridors within the Goleta Planning Area shall be protected and, where feasible and appropriate, enhanced.***

LCP Policy BIO-GV-3 of the Goleta Community Plan states:

***Development within areas designated Environmentally Sensitive Habitat or Riparian Corridor shall comply with the applicable habitat protection policies.***

The project sites are located on two adjacent blufftop properties between the first public road and the sea (Exhibits 1 and 2). Each lot is approximately 5,600 sq. ft., 40 ft. in width and 140 ft. in length. The subject parcels are undeveloped, relatively flat and are covered with low-lying vegetation. The project EIR notes that the parcels have been somewhat degraded by disturbances such as the presence of trails well-used by humans and domesticated animals, and deep tire ruts worn into the soil near Del Playa Drive. Two public trails are adjacent to the sites: one running parallel to the easternmost project parcel (Parcel 23) from the street to the bluff top, where it connects to another trail that runs east-west along the bluff seaward of the subject parcels and extending beyond the subject parcels.

Wetlands are present over most of the site (Exhibit 3). Four parcels east and one parcel west of the subject sites are vacant open space parcels, also part of the vernal wetland complex, owned by Isla Vista Recreation and Park District and the County of Santa Barbara. The certified zoning maps designate the subject area as Environmentally Sensitive Habitat (ESH). Under the certified LCP, wetlands and vernal pools are specifically identified as unique, rare, and fragile habitats and specific policies are included in the LCP to provide protection of these resources. The existence of a vernal pool in this area was previously identified on the Coastal Commission's Coastal Resources Environmentally Sensitive Area maps prepared in the mid-1970s and are also listed on the County's zoning overlay maps as an ESHA area.



A wetland delineation was conducted by FLx in 1997 on the subject parcels (Exhibit 3). The wetlands were delineated based on positive evidence of at least one indicator (i.e., hydrophytic vegetation, hydric soils, or wetland hydrology). On the project parcels, the 1997 delineation concluded that wetland coverage was 61% on Parcel 22 and 48% on Parcel 23. The wetlands were vernal swales and flats which were classified in the FLx report as palustrine emergent-nonpersistent seasonally-saturated vernal drainage swale wetlands. In addition to wetlands, the Final EIR for this project reports that several small patches of native perennial grassland dominated by purple needlegrass were recorded in the southern parts of Parcels 22 and 23.

There are competing assertions regarding the adequacy of the 1997 FLx wetland delineation, on behalf of the applicants as well as the appellants. The appellants assert that the wetlands are more extensive than indicated in the 1997 FLx delineation, and the applicants assert that the wetlands are in fact less extensive than delineated in the 1997 report. The applicants engaged a consultant and had a separate report prepared regarding the location of the wetlands. The applicants' survey, prepared by Rachel Tierney Consulting (2003), indicated a smaller wetland footprint on the subject parcels. However, the Tierney survey indicates in the methodology that the survey did not occur in the appropriate season to evaluate hydrology or vegetative indicators, and uses the Army Corps of Engineers (ACOE) methodology, rather than the test for determining presence of wetlands used by the Coastal Commission.

Testimony at County hearings presented by appellants Bruce Murdock & Ed Maguire included pictures and statements in support of their position that the extent of wetlands and vernal pools on the subject lots are more extensive than delineated by FLx. These appellants suggested that a new wetland delineation should be required. However, the FLx delineation already demonstrates that the entirety of the subject parcels fall within either delineated wetlands or buffer zones in which residential development would not be allowed under the LCP except when such approval would be necessary to avoid a taking. Thus, the County determined that the FLx report was sufficient in this case for the purposes of determining the extent of development that should be allowed to avoid a taking.

The Commission's biologist reviewed the FLx and Tierney reports and concluded that the wetland boundary established by FLx should be accepted (see Memo in Exhibit 10). The Commission's biologist concluded that the FLx wetland delineation appears accurate based on the available information. The FLx report properly utilized the U.S. FWS Cowardin Wetlands Classification System to delineate vernal and wetland habitat on the five subject properties. The FLx report identified wetlands based on evidence of hydrophytic vegetation, hydric soils and/or wetland hydrology on the project lots.

Therefore, for the reasons described above, the following discussion and analysis of onsite wetlands specifically refers to the 1997 FLx delineated wetlands, unless otherwise indicated.

As stated previously, the County's coastal development permits approved the construction of two-story, single-family residences a maximum of 25 feet in height. Approved development on Parcel 22 included construction of a 1,012 sq. ft. single-family dwelling & 400 sq. ft. carport. On Parcel 23, the approved development included construction of a 1,220 sq. ft. single-family dwelling, 400 sq. ft. carport, and 216 sq. ft. of first floor deck area. The County's approval allowed for development on Parcels 22 and 23 to be constructed as close as the edge of the delineated wetland, as discussed in the findings for the revised project (pg. A-22): "The revised project modifies the proposed mitigation to avoid encroachment of the delineated wetland areas on the site while providing design flexibility to allow for the construction of two single-family dwellings approximately 1,220 and 1,012 s.f. of living space on Parcels 23 and 22, respectively, with design standards subject to approval of the BAR."

### **1. Takings**

In general, the LCP policies work together to require siting, design, and mitigation to protect wetland habitat. LCP Policies 2-11, 9-9, and 9-14; Section 30231, and 30240 as incorporated by LCP Policy 1-1; and Zoning Ordinance Sections 35-97.7 and 35.53 necessitate measures including siting the project with setbacks and buffers to prevent impacts which would degrade the ESHA and/or wetland resources. Specifically LCP Policy 9-9 requires a 100-foot buffer to be maintained in a natural condition along the periphery of all wetlands. No permanent structures shall be permitted within the wetland or buffer except structures of a minor nature. As stated previously, the subject development includes the construction of two residences on adjoining parcels. There is no dispute that the approved project is entirely within the required 100-foot wetland buffer. Therefore, application of LCP Policy 9-9, by itself, would require denial of the project because the 100-foot wetland buffer is not feasible on the site.

However, the Commission must also consider Section 30010, and the Supreme Court decision in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 112 S.Ct. 2886. Section 30010 of the Coastal Act provides that the Coastal Act shall not be construed as authorizing the Commission to exercise its power to grant or deny a permit in a manner which will take private property for public use. Application of Section 30010 may overcome the presumption of denial in some instances. The subject of what government action results in a "taking" was addressed by the U.S. Supreme Court in *Lucas v. South Carolina Coastal Council*. In *Lucas*, the Court identified several factors that should be considered in determining whether a proposed government action would result in a taking. For instance, the Court held that where a permit applicant has demonstrated that he or she has a sufficient real property interest in the property to allow the proposed project, and that project denial would deprive his or her property of all economically viable use, then denial of the project by a regulatory agency might result in a taking of the property for public use unless the proposed project would constitute a nuisance under State law. Another factor that should be considered is the extent to which a project denial would interfere with reasonable investment-backed expectations.

The Commission interprets Section 30010, together with the *Lucas* decision, to mean that if Commission denial of the project would deprive an applicant's property of all reasonable economic use, the Commission may be required to allow some development even where an LCP policy would otherwise prohibit it, unless the proposed project would constitute a nuisance under state law. In other words, certified LCP Policy 9-9 cannot be read to deny all economically beneficial or productive use of land because it cannot be interpreted to require the Commission to act in an unconstitutional manner.

In the subject case, the applicants purchased the properties in March 1988 for \$30,000 each. The Land Use Plan and Coastal Zoning Ordinance designated the parcels as zoned for single-family residential use at the time the applicants acquired them. Del Playa Drive was partially developed at that time, with residences to the east and to the west of the project site. The certified LCP also identified ESHA on the parcels at the time the applicants acquired them. The applicants' parents and in-laws, John and Barbara Chase, purchased one of the nearby vacant blufftop lots (Lot 27) on January 23, 1988. Before John and Barbara Chase purchased Lot 27, John Chase was aware of the presence of a vernal pool complex and discussed the implications of it with County planning staff. The County's Findings indicate that John Chase was the principal family member who followed local development issues and had a great familiarity with the area and the events occurring in Isla Vista and the County regarding real estate development and that Chris and Kathryn Chase relied on the advice of John Chase before they purchased the subject parcels. John Chase had actual knowledge of the vernal pool overlay on and adjacent to the subject lots and the impediments to development the overlay imposed before Chris and Kathryn Chase acquired the subject parcels. The County findings also indicate that as a result of his discussions with County staff, John Chase understood that residential development on the vacant blufftop parcels containing the vernal pool complex would need to minimize the intrusion of structures into vernal pool areas and/or include measures to avoid any significant environmental damage.

The Commission finds that in this particular case, other allowable uses for the subject site, such as a public park, are not feasible and would not provide the owner an economic return on the investment. Each parcel is approximately 5,600 sq. ft. in size, and there are other similarly sized parcels with residential development located further to the east and west along the Del Playa Drive bluff top. Some of the neighboring parcels have been acquired by the Isla Vista Recreation and Park District. There is currently no offer to purchase the property from any public agency. The Commission thus concludes that in this particular case there is no viable alternative use for the site other than residential development. The Commission also finds that, when they purchased the subject parcels, Chris and Kathryn Chase reasonably expected that some residential development would be allowed, although it would need to be sited and designed to minimize impacts on the sensitive habitat on the parcels. The Commission finds, therefore, that outright denial of all residential use on the parcels would interfere with reasonable investment-backed expectations and deprive the property of all reasonable economic use.

Next the Commission turns to the question of nuisance. There is no evidence that construction of a residence on the project site would create a nuisance under California law. Other houses have been constructed nearby, apparently without the creation of nuisances. Furthermore, the use that is proposed is residential, rather than, for example, industrial, which might create noise or odors or otherwise create a public nuisance. In conclusion, the Commission finds that a residential project on the subject property can be allowed to permit the applicant a reasonable economic use of their property consistent with Section 30010 of the Coastal Act.

While the applicant is entitled under Section 30010 to an assurance that the Commission will not act in such a way as to take their property, this section does not authorize the Commission to avoid application of the policies of the LCP, including LCP Policy 9-9, altogether. Instead, the Commission is only directed to avoid construing these policies in a way that would take property. Aside from this instruction, the Commission is still otherwise directed to apply the requirements of the LCP. Therefore, in this situation, the Commission must still comply with the LCP Policy 9-9 as well as the other LCP wetland protection policies, by avoiding impacts that would disrupt and/or degrade wetlands, to the maximum extent that this can be achieved without taking the property.

As discussed above, the proposed development would necessarily be approved within the 100-foot wetland buffer in order to provide an economically viable use. Therefore, siting and design alternatives must be considered in order to identify the alternative that can avoid and minimize impacts to the wetland to the greatest extent feasible. In this case, the County-approved project is located on the northern end of the parcels, as close as the immediate edge of the delineated wetland boundary, effectively eliminating the wetland buffer requirement (Exhibit 6). In reliance on this option, to provide a level of development that would not constitute a taking, the County granted variances from setback standards on both parcels to avoid impacts to wetlands. The County granted variances on Parcel 22 to avoid fill of designated wetlands, allowing the structure to be built with a 5-foot front yard setback, a zero western side yard setback, and a three-foot eastern side yard setback (Exhibit 6). Variances from setback standards were also granted on Parcel 23 to avoid fill of designated wetlands, allowing the structure to be built with a 12-foot front yard setback, a 2-foot western side yard setback, and a standard 5-foot eastern side yard setback (Exhibit 6).

The proximity of the wetlands makes this a special case. Though the County-approved residential structures would be located outside of the delineated wetlands, development would be allowed as close as the edge of the wetland. This location will not prevent direct impacts to the wetlands since the structure will abut the habitat area. This will necessarily entail grading changes directly adjacent to the wetland, modifying the natural hydrology and possibly contributing to sedimentation within the wetland. Additionally, the lack of a setback of any kind from the wetland will result in construction impacts to the wetlands because there would be no area outside of the wetlands for workers to use to access the south end of the property during construction of the

residence. Further, the owners/occupants of the house will reasonably expect to access the rear of the structures for routine maintenance such as repainting, clearing of gutters, windows cleaning, etc. Therefore, the County's approved development footprint, though set outside of the wetland boundary, will result in the direct use of the wetland for pedestrian and/or construction access. Furthermore, the lack of a setback encourages the use of the wetlands as a backyard since there would be no defined area where activities and entry is excluded.

The Commission finds, however, that there is a feasible alternative configuration that would reduce the aforementioned impacts of the short-term construction and long-term maintenance by implementing a 5-foot wetland setback (Exhibit 7). The 5-foot setback is not intended to provide a natural buffer between development and the wetlands, but rather is intended to ensure that future owners or occupants will not require direct use of the wetlands in order to access the rear of the structure. Therefore, to avoid any direct loss of wetlands as a result of the proposed residential development, the Commission requires the applicant to submit revised plans, pursuant to **Special Condition One (1)**, illustrating that all structures, except for the rear yard fencing required by Special Condition One (1) or backyard decks or patios that preserve the ability to walk around the rear of the structures, are setback a minimum of five feet from the wetland boundaries delineated in the FLx report dated May 1997, as illustrated in Exhibit 7.

Application of this requirement of Special Condition One would modify the development footprint by requiring it to be located five feet further north on the parcel than previously approved by the County. However, as discussed above, the Commission must balance the protection of wetlands with the issue of providing reasonable use of the property. The subject properties are zoned for residential use and the applicants have some expectation to pursue economically viable residential use of the parcels. However, the level of residential development that would provide the minimum economically viable use of the property is not defined.

The LCP required setbacks on the subject parcels are: 20 feet from the street right-of-way; a minimum of 5 feet from the side of each lot; and 15 to 25 feet from the rear yard depending on whether the rear yard abuts a permanently dedicated open space or street. In this instance, the Commission finds, as it has found in past actions, that variances to other required development standards such as street setbacks, are appropriate where it is necessary in order to avoid or minimize impacts to sensitive resource areas, such as wetlands.

The applicants proposed a two-story 1,800 sq. ft. residence on each parcel. As approved by the County the applicants would receive approximately 1,412 sq. ft. of development on Parcel 22 and 1,620 sq. ft. of development on Parcel 23, including garage or carport. With the five-foot wetland setback as required by Special Condition 1, the development would be reduced to approximately 1,298 sq. ft. on Parcel 22 and increased to approximately 1,744 sq. ft. on Parcel 23 if the applicant is permitted to build a full second story (100 % coverage compared to 75% previously allowed by the County). Additional living area may be obtained by reducing the front yard setback

and/or eliminating the sideyard setbacks. As shown in Exhibit 8, the maximum buildout potential given the 5-foot wetland setback requirement, with reduction of the front yard setbacks and elimination of sideyard setbacks, is approximately 1,544 sq. ft. of total development on Parcel 22 and approximately 2,712 sq. ft. on Parcel 23.

To ensure that the applicants receive an economically viable use of their property while meeting the 5-foot wetland setback described in Special Condition One, the Commission finds that the applicants have additional alternatives with respect to relocation or redesign of the project. The Commission finds that to provide a reasonable use of the property and maximum feasible protection of wetlands, the front yard setbacks may be reduced to three feet on Parcel 22 and five feet on Parcel 23, and the side yard setbacks may be eliminated. Staff notes that a three-foot and five-foot front yard setback would still allow for a sidewalk along Del Playa Drive. The Commission approves these changes pursuant to the variance provisions in Section 35-173 of the Coastal Zoning Ordinance. Furthermore the Commission finds, as described in Special Condition 1, that to provide a reasonable use of the property and maximum feasible protection of wetlands, the applicants may gain additional square footage by constructing a 100% second story development over the ground floor development, rather than the 75% approved by the County. The maximum potential development footprint, given these parameters, is shown on Exhibit 8.

As shown in Exhibit 8, the maximum development footprint for the structure on *Parcel 22*, consistent with the required 5-foot wetland setback, would be approximately 772 square feet, including a garage or carport. The total structural development, including first floor and second-story development, would be approximately 1,544 sq. ft., 1,144 sq. ft. of total living space with a 400 sq. ft. garage or carport. Under this scenario, there would be no structural development in or over the wetland habitat, including decks.

As shown in Exhibit 8, the maximum development footprint for the structure on *Parcel 23*, consistent with the required 5-foot wetland setback, would be approximately 1,356 square feet, including a garage or carport. The total structural development, including first floor and second-story development, would be approximately 2,712 sq. ft., 2,312 sq. ft. of total living space with a 400 sq. ft. garage or carport. Under this scenario, there would be no structural development in or over the wetland habitat, including decks.

The LCP requires new single-family residences to provide off street parking for two cars. This is provided on these parcels by the 400 square foot garage or carport. However, approval of variances to reduce the front yard setbacks makes it infeasible to have an extended driveway, for additional parking purposes. If the garage or carport is used for storage, the residents will be forced to park on the street. Therefore to ensure that the projects will not have adverse impacts on the availability of parking for residents, guests, and visitors to the bluff top trail, the Commission requires the applicants to maintain the garage or carport clear and available for parking for two cars, as required by **Special Condition Twelve (12)**.

Approval of a variance to eliminate the setback between the structures, allows the structures to more closely resemble a duplex. The LCP base zone district allows only one single-family dwelling per lot, and not duplexes. A duplex at this location might be considered inconsistent with the “community character” of the single-family residential zone district.

However, as described above, there are special circumstances in this case which warrant the balancing of LCP policies in order to provide reasonable use of property, and minimize impacts to the wetlands. Strict application of visual and wetland protection policies would not allow for reasonable use. Where LCP policies conflict, the alternative that is most protective of coastal resources shall apply. Section 35-53 of the Zoning Code specifically assigns a higher priority to implement ESHA protection standards over other resources, such as visual resources. As detailed in Section E *Public Access and Visual Resources*, to avoid taking of private property while implementing the wetland protection policies of the LCP to the maximum extent feasible, the policies associated with visual resources (such as zone district setbacks) cannot be fully implemented.

Because the lots are zoned for one single family dwelling (SFD) per lot and, even with no setback between the structures, *only* one SFD would be permitted on each parcel, the Commission finds that the lack of a setback is limited to a community character issue and is not inconsistent with the requirements of the base zone district. Furthermore, the elimination of side yard setbacks between separately owned structures has been feasibly implemented under similar circumstances further downcoast on the Isla Vista blufftop. In December 2000, the County approved the construction of two single family residences on two adjacent 7,000 square foot bluff top lots on Del Playa Drive that are zoned for multiple residential (99-CDP-046 and 99-CDP-047). The County approved two structures that were each 25 feet in height and 2,093 square feet in size, with a 293 square foot attached garage. A side yard setback variance was granted for each structure, creating a zero side yard setback between the structures. Although the variances resulted in the appearance of a duplex development, the approved structures are two individual single-family residences on separate parcels.

Under the LCP, variances from the provisions of the LCP are allowed when exceptional conditions such as the size, shape, unusual topography, or other extraordinary situation or condition property would impose practical difficulties or would cause undue hardship unnecessary to carryout the intent and purpose of the zoning ordinance. In this case, there are exceptional conditions due to the large area of wetlands on the property. Further the Commission finds that the strict application of the LCP policies would deprive the property of single-family residential privileges, enjoyed by other property in the vicinity also zoned for single-family residential. The granting of the above-described variances will not constitute a grant of special privileges that are inconsistent with other properties in the vicinity and base zone district. The approved variances do not constitute a grant of special privilege because the total allowable development is roughly equivalent to other residential uses in the immediate vicinity, and the reduction of front setbacks and elimination of side yard setbacks are necessary to allow a reasonable use of the property. Further, the variances are not in conflict with the intent

and purpose of the LCP because development must be sited and designed to avoid destruction of wetlands.

As explained above, the Commission finds that there is a range of alternatives within the maximum development footprint (Exhibit 8) that would provide for reasonable development of the property. These alternatives will provide similar outdoor/indoor living space similar to nearby single-family residential development, which according to the County's findings, "ranges from 1,300 to 2,100 square feet of living space." In addition to the various setback modifications, the Commission finds that the parking area may be in the representation of a garage rather than a carport. The Commission also finds that the applicants may redesign their project to have a roof top deck provided that the maximum height limit of 25 feet is not exceeded. The Commission also notes that the applicants may redefine the amount of living space on each parcel through other means such as a lot line adjustment, subject to County approval.

## **2. Wetland Mitigation**

The existing certified LCP provides LUP Policy 1-1 and Section 30240 of the Coastal Act as incorporated into the LCP; LUP Policies 1-2, 2-11; certified policies of the Goleta Valley Community Plan BIO-GV-2 and BIO-GV-3; and Zoning Ordinance Sections 35-97.7 which require development adjacent to sensitive resource areas, to be regulated to avoid adverse impacts on habitat resources, including application of measures such as setbacks, buffers, grading and water quality controls. Section 30240 of the Coastal Act requires that development adjacent to ESHA is sited and designed to prevent impacts that would significantly degrade ESHA and be compatible with the continuance of the habitat areas. Section 35-97.7 specifically sets forth the types of conditions that may be necessary to ensure protection of the habitat area(s). Such conditions may, among other matters, limit the size, kind, or character of the proposed work, require replacement of vegetation, establish required monitoring procedures and maintenance activity, stage the work over time, or require the alteration of the design of the development to ensure protection of the habitat. The conditions may also include deed restrictions and conservation and resource easements. Any regulation, except the permitted or conditionally permitted uses, of the base zone district may be altered in furtherance of the purpose of this overlay district by express condition in the permit. The Commission has determined that in conjunction with siting new development, additional actions can be taken to minimize adverse impacts to ESHA.

In the design and review of any new development, alternative projects must be identified and analyzed. If there is no feasible alternative that can avoid or eliminate all significant impacts to resources, then the alternative that results in the fewest or least significant impacts must be selected. Any impacts that cannot be avoided through the implementation of siting or design alternatives must be mitigated, with priority given to on-site mitigation. Off-site mitigation measures shall only be approved when it is not feasible to mitigate impacts on the project site. However, mitigation cannot be substituted for implementation of the project alternative that would avoid impacts to the resources, to the maximum extent feasible in this case.



As noted above, the LCP requires a 100-foot natural buffer area to setback development from wetlands. New residential development contributes to an increase in pollutants and/or adverse impacts from light, noise, thermal, and household-related chemicals, which may have direct adverse impacts to the health of the wetland and associated plant and animal species. Buffers move the source of disturbance away from sensitive areas to attenuate these effects. Additionally, providing a significant distance between new development and the wetland will provide a natural barrier from effects of runoff, by allowing for infiltration of runoff, minimizing erosion and sedimentation. Furthermore, siting new development such that an adequate buffer is provided between the sensitive resource area and development ensures that removal or thinning of native vegetation for fuel modification is not necessary. Finally, natural vegetation buffers minimize the spread of invasive exotic vegetation that tends to supplant native species, from developed areas into sensitive resource areas. The presence of surface or subsurface water makes wetland areas especially susceptible to invasion by non-native species that can in many instances out compete native plants. Invasive plant species do not provide the same habitat values as natural riparian areas. Therefore, the inability to provide a buffer on the site is a significant adverse impact to the wetland resource.

The Commission has found in past actions that such minimum buffer standards are necessary to ensure the protection of environmentally sensitive resources, such as wetlands, and any subsequent reduction to the buffer may adversely impact resources. In this case, there would be no effective buffer between the residential development and the wetlands.

The project EIR reported the following potential impacts as a result of residential development on the subject parcels (page 31):

*...the adjacent vernal pool could be indirectly affected by impacts to wetlands if sufficient plant numbers are lost and/or if drainage patterns are affected due to construction of the residential structures. Indirect impacts are also likely due to site development, not only from the long-term presence of the residential development but from the grading during site preparation. Grading and increased impermeable surfaces on the project parcels do have the potential to result in potentially significant impacts to the sensitive wetland habitat by altering the established drainage patterns that helped create the habitat. If soils were left exposed during the rainy season, additional erosion and offsite sedimentation could occur. In addition, the soils within the development footprint may need to be dried to conduct the foundation work which could lead to additional impacts. Because of the relatively small development footprint, the runoff and erosion created by the proposed development is expected to be minimal. However, because the development would occur within a wetland habitat, any changes in drainage patterns are considered a potentially significant impact (Class I) due to potential changes to the wetland which is hydrologically linked to the adjacent vernal pool.*

The proposed residential development would also introduce permanent lighting, fencing, noise, human presence, and/or domestic animals as well as use of normal household paints and chemicals which could adversely impact the adjacent wetland without a

sufficient buffer. The project EIR found that the project would considerably contribute to the cumulative significant impacts on biological resources of the Goleta Valley and specifically in the Isla Vista community due to the tremendous adverse pressure on the limited remaining wetland resources.

Therefore, to help offset the unavoidable impacts to wetland resources due to the proximity of the residential development, consistent with the LCP's wetland and ESHA protection policies, the Commission requires the applicants to submit an onsite wetland enhancement plan pursuant to **Special Condition Five (5)**. The Onsite Wetland Enhancement Plan must be prepared by a qualified biologist, ecologist, or resource specialist with experience, acceptable to the Executive Director, in the field of restoration ecology, and with a background knowledge of vernal wetlands. The Onsite Wetland Enhancement shall include, at a minimum, the removal of any and all invasive plant species on the site; the removal of non-native plants within the boundary of the delineated wetland (FLx, 1997) and the adjacent open space area(s) on-site; revegetation of disturbed areas with appropriate native species, including areas where invasive and non-native plants were removed; a program to provide formal written notice to the occupant(s) of the wetland protection goals and objectives and statement that any activities (with the exception of certain wetland maintenance activities implemented by approved personnel), within the wetland are strictly prohibited; and the installation of a permanent split-rail fence and educational and instructional signage to protect the remaining wetland habitat against impacts from humans as required in Special Condition One.

Special Condition 5 requires the Onsite Wetland Enhancement Plan to include a baseline assessment of the resource, performance standards, and provisions for on-going wetland area maintenance/management for the life of the project. At a minimum, semi-annual maintenance/management activities shall include, as necessary, debris removal, periodic weeding of invasive and non-native vegetation, revegetation consistent with the approved enhancement plan, and inspection and necessary repairs to the required fencing and signage. Maintenance/management activities shall occur within the onsite wetland boundaries delineated in the 1997 FLx report and the adjacent open space areas on the site. The Enhancement Plan shall contain detailed information regarding the implementation of enhancement activities, such as timing, methods, and location of removal, planting and maintenance.

The Enhancement Plan shall designate qualified personnel to implement the maintenance/management activities. This may be achieved by either: (1) hiring a qualified resource specialist to implement the wetland maintenance program or (2) recording an offer to dedicate an open space easement, encompassing the entire fenced-off wetland area south of the rear yard fencing (see Exhibit 4), to a qualified public entity or private non-profit organization acceptable to Executive Director and Santa Barbara County Planning & Development, that shall implement the wetland maintenance/management program, as defined in the approved Onsite Wetland Enhancement Plan. The applicants shall provide the resource specialist's qualifications, for the review and approval of the Executive Director, at least two weeks prior to

scheduled maintenance OR evidence, including a graphic depiction and legal description of the open space, that a qualified entity skilled at wetland restoration or management has accepted the applicants' open space easement.

Furthermore, **Special Condition Six (6)** outlines long-term maintenance/management responsibilities that would be implemented under the Enhancement Plan. No grass cutting shall be permitted within the delineated wetland areas except where required for wetland enhancement purposes and as approved in the Onsite Wetland Enhancement Plan. No disking for fire control or any other use shall occur in the wetland or buffer areas. No mosquito control shall be permitted except use of mosquito fish. Invasive plant species shall not be permitted anywhere on the project site(s).

Though the onsite enhancement activities will protect the wetland to the maximum extent feasible, the lack of a natural buffer, impact to existing hydrology, and impacts associated with human presence will have lasting cumulative effects on the wetland. As stated previously, given the site constraints, it is simply not feasible to approve residential development that will avoid indirect impacts to wetlands. As a result the County required the applicants to provide offsite wetland mitigation at a ratio of 2:1 for each square foot lost indirectly.

Therefore, the Commission finds that offsite mitigation is necessary to fully mitigate the impacts of the proposed residential development. Pursuant to **Special Condition Five (5)**, the applicants shall provide mitigation through the restoration of an area of degraded wetland habitat at an off-site location in the Goleta vicinity that is of equivalent type and acreage to the area of habitat impacted by the development. The extent of wetlands on the subject parcels, as identified in the 1997 FLx report, is 6,112 sq. ft. The area(s) of disturbed or degraded wetland habitat shall be restored sufficient to provide mitigation of the long-term wetland impacts at a ratio of 2:1 for the 6,112 sq. ft. of vernal pool wetland habitat. The total area of created or restored vernal pool wetland habitat required is 12,224 sq. ft.

A restoration plan must be prepared by a biologist or qualified resource specialist and must provide performance standards, and provisions for maintenance and monitoring as detailed in Special Condition 5.

### **3. Wetland Protection Measures**

LUP Policies 1-2, 2-11, 3-19, 9-9, 9-13, 9-14, 9-19, 9-20 and 9-21; certified Goleta Community Plan policies BIO-GV-2 and BIO-GV-3; and the certified Zoning Ordinance (Article II) Sections 35.53 and 35-97.7 regulate potential direct and indirect impacts to wetland, ESHA, and water quality. Where development is unavoidable in constrained areas, the siting and design of development should avoid, where feasible, and minimize individual and cumulative impacts to coastal resources. Coastal Act Section 240, incorporated by reference in LUP Policy 1-1 provides a framework for new development in areas adjacent to ESHAs to be sited and designed to prevent impacts which would degrade those areas.

As stated above, even with the 5-foot setback in place, there will be no effective buffer between development and the wetland resource. Given the site constraints and the unavoidable proximity of the wetland, in this case, it would be beneficial to erect an artificial barrier to ensure that the wetlands are not used as an extension of the backyard. Therefore, the Commission also requires revised plans, pursuant to **Special Condition One (1)** illustrating that a permanent rear yard fence, a minimum of four feet in height, shall be installed along the boundary of the wetlands between the approved structures and the open space, as roughly indicated in Exhibit 4. Further, Special Condition One requires that the rear yard fencing be installed prior to start of construction to protect the remaining wetland habitat against impacts from construction activities. The fence shall have signs posted to discourage entry. Such rear yard fencing may be visually permeable, however, no barbed-wire fencing or permanent chainlink fencing shall be permissible anywhere on the property.

The terms of the approval of this CDP shall be recorded as a deed restriction on each property as specified in **Special Condition Thirteen (13)**. This shall ensure that the requirement for rear yard and wetland fencing is permanent. Furthermore, to ensure that the wetland area is not interpreted as an extension of the backyard or as parkland available for active recreational uses, Special Condition 1 requires the installation of a permanent split rail fence, maximum four feet in height, to be installed along the balance of the eastern property line south of the required rear yard fence on Parcel 23, along the southern property line of Parcels 22 and 23, and on the balance of the western property line south of the rear yard fence on Parcel 22, as indicated in Exhibit 4. The split-rail fence shall also be installed prior to start of construction to protect the remaining wetland habitat against impacts from construction activities. The minimum distance from ground level to the split-rail fence's first rung shall be 18 inches to allow for wildlife movement through the site.

Permanent signage, as required in **Special Condition Eleven (11)** shall be posted along the split-rail fence to inform the public about the sensitive wetland resource and the enhancement activities. Prior to issuance of the coastal development permit, the applicants shall submit signage plans, for the review and approval of the Executive Director, indicating the location, size, design, and content of all signs to be installed. All signs shall be installed prior to the start of construction, concurrent with the installation of the split-rail wetland protection fence. A minimum of four signs shall be placed in conspicuous locations along the split-rail fence, as shown in Exhibit 4. The language shall notify the public that the area contains a sensitive wetland habitat and that activities are prohibited within the fenced area.

Furthermore, in order to protect habitat values as required by Section 30240 of the Coastal Act, the Commission has found, in permit actions, that it is necessary to consider alternatives for siting and designing development in order to ensure that the alternative chosen is the one that minimizes impacts to ESHA. One such impact is the effect of artificial night lighting on wildlife. To address the impact of night lighting on the neighboring open space habitat, the Commission requires exterior night lighting to be

minimized, shielded and directed away from the wetland and surrounding open space wherever lighting associated with development adjacent to these resources cannot be avoided pursuant to **Special Condition Seven (7)**. Special Condition 7 requires exterior night lighting installed on the project site to be of low intensity, low glare design, and be hooded to direct light downward onto the subject parcel(s) and prevent spill-over onto adjacent parcels and any public open space areas, and into the wetland habitat. The only outdoor night lighting allowed on the subject parcel is limited to the minimum necessary to light walkways used for entry and exit to the structures, including parking areas on the site. Security lighting attached to the residence and garage shall be controlled by motion detectors. The applicants shall submit a lighting plan for the review and approval of the Executive Director, fulfilling the lighting requirements.

Additionally, construction related disturbances may undermine the habitat value of the wetland complex through improper storage or placement of materials or equipment or through improper release of debris, waste or chemicals. To address the potential adverse impacts during construction, the Commission finds it necessary to provide a framework of the property owner's responsibilities, that would apply during the construction phase of the project as well as for the life of the project, as described in **Special Condition Twelve (12)**. Special Condition 12 outlines the applicants' responsibilities including parameters for placement and storage of construction materials, debris, or waste to ensure that it will not be subject to erosion nor degrade wetland habitat. Special Condition 12 also requires that any and all debris resulting from construction activities shall be removed from the site on the same day. Equipment shall not be operated or stored south of the rear yard fencing. Additionally, during construction, washing of concrete trucks, paint, equipment, or similar activities shall occur only in areas where polluted water and materials can be contained for subsequent removal from the site. Wash water shall not be discharged to the storm drains, street, drainage ditches, creeks, or wetlands. Areas designated for washing functions shall be at least 100 feet from any storm drain, water body or sensitive biological resources. The location(s) of the washout area(s) shall be clearly noted at the construction site with signs. In addition, construction materials and waste such as paint, mortar, concrete slurry, fuels, etc. shall be stored, handled, and disposed of in a manner which prevents storm water contamination.

Furthermore, the Commission requires a construction monitor, pursuant to **Special Condition Eight (8)**, in order to ensure that construction activities are carried out in a manner that will not diminish wetland values. The applicants shall retain the services of a qualified biologist or environmental resources specialist with appropriate qualifications acceptable to the Executive Director to serve as the biological monitor. The biological monitor shall oversee the installation of the permanent rear yard fencing and split-rail wetland protection fence at the edge of the permitted construction zone, prior to any construction activities. The biological monitor shall be present during excavation, exterior construction such as framing and foundation placement, or any grading activities to prevent intrusion into the delineated wetland habitat. The applicants shall cease work should any construction activities adversely impact wetland habitat, on or adjacent to the site(s). In such event, the biological monitor(s) shall direct the applicants

to cease work and shall immediately notify the Executive Director. Project activities shall resume only upon written approval of the Executive Director. If significant impacts or damage occur to sensitive habitat or species, the applicants shall be required to submit a revised, or supplemental program to adequately mitigate such impacts. The revised, or supplemental, program shall be processed as an amendment to this coastal development permit.

LCP Policy 9-14 specifically states that “new development adjacent to or in close proximity to wetlands shall be compatible with the continuance of the habitat area and shall not result in a reduction in the biological productivity or water quality of the wetland due to runoff (carrying additional sediment or contaminants), noise, thermal pollution, or other disturbances.”

The project EIR recognizes that the proposed development has the potential to adversely impact coastal water quality through the removal of native vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources. The use of insecticides, herbicides, or any toxic chemical substances has the potential to significantly degrade ESH. The use of pesticides and/or herbicides by the County for mosquito abatement poses potential adverse effects to coastal waters. These impacts reduce the biological productivity and the quality of coastal waters. One of the long-term management responsibilities assigned by **Special Condition Six (6)** prohibits mosquito control except use of mosquito fish.

To ensure protection of water quality consistent with the certified LCP, **Special Condition Nine (9)** requires drainage and runoff control plans, prepared by a licensed engineer, that incorporates structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity, and pollutant load of stormwater leaving the developed site. The selected BMPs (or suites of BMPs) shall be designed to treat or filter stormwater from each runoff event, up to and including the 85<sup>th</sup> percentile. Additionally, the plans shall reflect that there shall be no net reduction in stormwater runoff to the on-site and adjacent wetland complex (as delineated in the 1997 FLx report). The plan shall be reviewed and approved by a qualified geotechnical engineer to ensure that the design does not represent a threat to the site stability or safety and the consulting biologist preparing the Onsite Wetland Enhancement Plan to ensure that redirection of drainage does not adversely impact on-site or adjacent wetlands.

Additionally, **Special Condition Twelve (12)** outlines the property owner's responsibilities, which includes special provisions for washing of concrete trucks, paint, equipment, or similar activities. Such activities shall occur only in areas where polluted water and materials can be contained for subsequent removal from the site. Wash water shall not be discharged to the storm drains, street, drainage ditches, creeks, or wetlands. Areas designated for washing functions shall be at least 100 feet from any storm drain, water body or sensitive biological resources. The location(s) of the washout area(s) shall be clearly noted at the construction site with signs. In addition, construction materials and waste such as paint, mortar, concrete slurry, fuels, etc. shall be stored, handled, and disposed of in a manner which prevents storm water contamination.

Furthermore, interim erosion control measure implemented during construction will serve to minimize the potential for adverse impacts to wetlands resulting from drainage runoff during construction and in the post-development stage. Therefore, the Commission finds that **Special Condition Ten (10)** is necessary to ensure the proposed development will not adversely impact water quality or coastal resources, consistent with the County's LCP.

The Commission also finds that the amount and location of any new development that may be proposed in the future on the subject site is significantly limited by the unique nature of the site and the environmental constraints discussed above. Therefore, to ensure that any future structures, additions, change in landscaping or intensity of use at the project site, that may otherwise be exempt from coastal permit requirements, are reviewed by the Commission for consistency with the resource protection policies of the Coastal Act, **Special Condition Four (4)**, the future development restriction, has been required. Finally, **Special Condition Thirteen (13)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

Therefore, as described above, the Commission finds that to allow reasonable use of property consistent with Section 30010 of the Coastal Act, there will be significant and unavoidable impacts to wetlands. The Commission further finds that as conditioned, the proposed residential development is the minimum necessary to avoid a taking and that the impacts to wetlands that cannot be avoided, are mitigated to the maximum extent feasible.

## E. PUBLIC ACCESS AND VISUAL RESOURCES

Section 30210 Coastal Act states:

*In carrying out the requirements of Section 4 of Article X of the California constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30211 states:

*Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

LCP Policy 1-1, incorporating Section 30251 of the Coastal Act states:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in*

*visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

LCP Policy 1-2 states:

*Where policies within the land use plan overlap, the policy which is most protective of coastal resources shall take precedence.*

LCP Policy 3-14 states:

*All development shall be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions and be oriented so that grading and other site preparation is kept to an absolute minimum. Natural features, landforms, and native vegetation, such as trees, shall be preserved to the maximum extent feasible. Areas of the site which are not suited for development because of known soil, geologic, flood, erosion or other hazards shall remain in open space.*

LCP Policy 4-4 states:

*In areas designated as urban on the land use plan maps, and in designated rural neighborhoods, new structures shall be in conformance with the scale and character of the existing community. Clustered development, varied circulation patterns, and diverse housing types shall be encouraged.*

LCP Policy 4-5 states:

*In addition to that required for safety (see Policy 3-4), further bluff setbacks may be required for oceanfront structures to minimize or avoid impacts on public views from the beach. Blufftop structures shall be set back from the bluff edge sufficiently far to insure that the structure does not infringe on views from the beach except in areas where existing structures on both sides of the proposed structure already impact public views from the beach. In such cases, the new structure shall be located no closer to the bluff's edge than the adjacent structures.*

LCP Policy 7-1 states, in part:

*The County shall take all necessary steps to protect and defend the public's constitutionally guaranteed rights of access to and along the shoreline. . . .*

Sec. 35-53. Overlay District Designations and Applicability. (in relevant part):

*...If any of the provisions of the overlay district conflict with provisions of the zoning district regulations, the provisions which are most restrictive shall govern... The provisions of the ESH Overlay District are more restrictive than any base zone district and therefore the provisions of the ESH shall govern over the regulations of any base zone or other overlay district.*

Sec. 35-71.7. R-1 Single-Family Residential Setbacks for Buildings and Structures(in relevant part):

*1. Front: Fifty (50) feet from the centerline and twenty (20) feet from the right-of-way line of any street...*

*2. Side: On each side of the lot, ten percent of the width of the lot except:*



***a. for lots zoned 2-E-1 [minimum 2 acre] or less, in no case shall the required side yard be less than five (5) feet nor more than ten (10) feet...***

***3. Rear: Twenty-five (25) feet or fifteen (15) feet if the rear yard abuts a permanently dedicated open space or a street to which access has been denied as part of an approved subdivision or other approved development permit.***

The project sites are located on two adjacent blufftop properties between the first public road and the sea (Exhibits 1 and 2). Each lot is approximately 5,600 sq. ft., 40 ft. in width and 140 ft. in length. The subject parcels are undeveloped, relatively flat and are covered with low-lying vegetation. Wetlands are present over most of the site (Exhibit 3). Two public access easements are adjacent to the sites: one County easement running parallel to the easternmost project parcel to the bluff top where another easement runs east-west for some distance extending onto and beyond the subject parcels. Four parcels east and one parcel west of the subject sites are vacant open space parcels, also part of the vernal wetland complex, owned by Isla Vista Recreation and Park District and the County of Santa Barbara. Nearby single family residential development "ranges from 1,300 to 2,100 square feet of living space" (County Board of Sups. Findings).

The Final EIR (September 2003) for the project reports that: "no organized activities are known to occur on the parcels, but there is ample evidence of regular human (and domestic wildlife) use of the site due to the trampled vegetation and scattered trash, as well as a number of well-worn paths (both legal and incipient) crossing the open space to the bluff top." The parcels have been somewhat degraded by disturbances such as the presence of trails well-used by humans and domesticated animals, and deep tire ruts worn into the soil near Del Playa Drive.

As stated previously, the County's coastal development permits approved the construction of two-story, single-family residences a maximum of 25 feet in height. On Parcel 22, the CDP approved construction of a 1,012 sq. ft. single-family dwelling & 400 sq. ft. carport. On Parcel 23, the CDP approved construction of a 1,220 sq. ft. single-family dwelling, 400 sq. ft. carport, and 216 sq. ft. of first floor deck area.

### **1. Public Access**

In addition to any applicable policies of the LCP, all projects located between the first public road and the sea requiring a coastal development permit, such as the proposed project, must be reviewed for compliance with the public access and recreation provisions of Chapter 3 of the Coastal Act. Coastal Act Sections 30210 and 30211 mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast.

With regard to public access, there is an existing vertical public accessway to the bluff top trail and beach adjacent to one of the subject parcels, and there is an east-west trending accessway along the blufftop offsite of the subject parcels. The lateral accessway along the blufftop leads to a stairway to the beach, west of the subject parcels. In addition, there are informal access trails traversing through the property.

Since the vertical or blufftop accessways allow access directly around the parcels the approved project would not have any directly impact on the public's ability to access the blufftop or beach. As proposed, however, the project would result in the closure and restoration of informal trails through the wetland area.

The Isla Vista beach is composed of a thin veneer of sand perched on a wave cut platform. The beach varies in width from approximately 43 feet to 136 feet (as measured from the base of the bluff to the MSL contour on the bedrock terrace), and is generally narrower at the west (up-coast) end and wider at the east (down-coast end). Vertical access to the beach is via a ramp and four public stairways. The beach fronting Del Playa Drive is a heavily used beach serving the student residential community of Isla Vista of over 20,000 people. Isla Vista beach is used both for recreational purposes and as a means of reaching adjoining beaches up and down-coast of this community. The Isla Vista beach is a public beach that is intensively used for a variety of recreational activities, including strolling, surfing, running, sunbathing, and fishing.

The proposed development will be located on the bluff top above this sandy beach of Isla Vista that is widely used by the public at large. The Commission also recognizes that this beach in Isla Vista below the bluff on which the development is proposed has been widely used by the public for many years and that prescriptive rights likely exist for public use of the dry sandy beach from the base of the bluffs seaward to the mean high tide line. Members of the public have used the Isla Vista beach for sunbathing at the base of the bluffs on the dry sand and for walking and running. In addition, during periods when the tide is high along this beach, the dry sand has been used in order to pass along the beach from one end to the other. Use of both the dry and wet sandy beach at the base of these bluffs has been documented as far back as 1965, with public use continuing generally until the present for active and passive access and recreation. Due to this continual public use of the beach below the bluffs on which the proposed development will be situated, the Commission notes that the project should not have any adverse impact on any prescriptive rights to that use that may exist.

Furthermore, due to the naturally thin veneer of sand over the wave cut platform, the sand beach is highly sensitive to alteration of the littoral environment that would reduce the amount of sand reaching the beach or accumulating on the wave-cut platform. Any future seawalls or shoreline protective devices on the subject sites would exacerbate natural seasonal fluctuation in the amount of sand (and the consequent width of the beach) and result in the long-term loss of the beach and related public beach access. These effects are the result of a number of coastal processes influenced or induced by the seawall, including: (1) increasing the amount of wave reflection at the seaward face of the seawall, thus increasing the amount of beach sand scour; (2) preventing the natural retreat of the coastal bluff face in response to wave attack, thus preventing the landward shift of the fronting beach, as adjoining, unprotected reaches of the bluff retreat; and (3) reducing the amount of sand contributed to the littoral beach by the erosion of the bluff face.

One seawall (Norris/Murphy) constructed in Isla Vista in 1979 has already resulted in the narrowing and almost complete disappearance of the beach directly in front of the seawall, as erosion on either side of the seawall has caused the bluff up and downcoast from the seawall to retreat, creating an artificial promontory which juts out into the active surf-zone. The western end of Isla Vista Beach is generally narrower than the eastern end, and currently there is limited access toward the western end during periods of high tide, particularly during the winter months when the sand beach exhibits a winter beach profile (i.e., lower and narrower accumulation of sand on the wave cut platform.) Further, as noted above, the effects of the Norris/Murphy seawall provides confirmation of the effects of seawalls and shoreline protective devices on lateral public access in Isla Vista.

In summary, future seawalls or shoreline protective devices necessary to protect the proposed development would result in substantial impact to lateral public beach access by directly displacing existing public beach area, and by causing the long-term progressive loss of beach width. Increased loss of sand on the beach due to wave scour and reduction in sand supply would adversely impact beach access to and recreational use of the Isla Vista Beach by narrowing the average width of the beach, and by increasing the frequency and length of time when no sand beach would be available on the wave cut terrace.

Therefore, the Commission finds that the County's approval of the project is not in conformance with the public access requirements of the County's LCP, which incorporates Sections 30210 and 30211 of the Coastal Act. In approving the proposed development, the County did not condition the proposed development to avoid the construction of a seawall or shoreline protective device in the future should the proposed development become threatened by bluff erosion and retreat. As a result, in order to ensure that the proposed project is consistent with the policies of the County LCP, including Section 30253 of the Coastal Act incorporated therein, and to ensure that the proposed project does not result in future adverse effects to coastal processes, **Special Condition Three (3)** in conjunction with **Special Condition Thirteen (13)** requires the applicants to record a deed restriction that would prohibit the applicants, or future landowners, from constructing a shoreline protective device or devices for the purpose of protecting any of the development approved under these applications.

Therefore, the Commission finds that, as conditioned, the proposed development will meet the public access and recreation policies of the County's LCP and Section 30210 of the Coastal Act.

## **2. Visual Resources**

LCP Policies 3-14 and 4-4 require new development to be designed to fit the topography of the site and be consistent with the scale and character of the neighborhood. LCP Policy 4-5 specifically requires that oceanfront structures minimize or avoid impacts on public views from the beach. In addition, Section 30251 of the Coastal Act, which is included in the certified LCP as a guiding policy, requires that visual qualities of coastal areas shall be considered and protected and, where feasible,

degraded areas shall be enhanced and restored. Policy 1-2 provides that where policies conflict the issue shall be resolved by applying the policies that are most protective of coastal resources. This is more specifically defined under the ESH Overlay District which explains that the provisions of the ESH shall govern over the regulations of any base zone district or overlay district.

The LCP policies as described above require that the proposed development be sited and designed to protect views to and along the ocean and scenic coastal areas and be visually compatible with the character of surrounding areas. The subject parcels are located on adjacent blufftop lots between the first public road and the sea and neighboring properties are open space. The County-approved footprint of each house would be setback approximately 141-152 feet from the bluff edge and would not be visible from the beach.

Notably, the project EIR reported the significant impact to public and private views as a result of residential development on the subject parcels. As reported in the project EIR:

***Development of the project sites would occur within one of the last residentially-zoned coastal open spaces within the surrounding Isla Vista community. Although the areal extent of the loss of this open space is relatively unsubstantial (less than 1 acre), the loss is considered significant when viewed with the context of the surrounding community which is densely developed...***

In addition, variances from setback standards were granted on both parcels to avoid impacts to wetlands. Although reduction of setback requirements address the LCP and Coastal Act issue of filling wetlands, they also serve to intensify the adverse visual impacts associated with development of the subject parcels. The County granted variances on Parcel 22 to avoid fill of designated wetlands, allowing the structure to be built with a 5-foot front yard setback, an eliminated western boundary setback, and a three-foot eastern side yard setback (Exhibit 6). Variances from setback standards were also granted on Parcel 23 to avoid fill of designated wetlands, allowing the structure to be built with a 12-foot front yard setback, a 2-foot western side yard setback, and a standard 5-foot eastern side yard setback (Exhibit 6).

Application of the visual policies of the LCP would require additional measures to encourage continuity with the open space environment and compatibility with the neighborhood character. Such measures would likely include further setbacks to promote through-views; elimination of setback variances, especially as pertains to the front yard to soften views from the first public road to the ocean; elimination of second story development; and/or restriction of landscaping to low-growing, low-mass plant species, such that at maturity the landscaping softens the effect of the structure but would not overpower the site with additional massing of trees, hedges, vines, etc.

However, in this case, the Commission must balance the protection of wetlands and the protection of visual resources in a manner that shall not be construed to authorize the “taking” of private property for public use. Where policies conflict, the alternative that is the most protective of coastal resources shall apply, consistent with Policy 1-2 of the

LCP. In this case, the implementation of the LCP polices that provide wetland protection would be, on balance, most protective of coastal resources. This is underscored by Section 35-53 of the Zoning Code which provides that ESH standards shall override the requirements of the base zone district. Consequently, the preferred alternative includes relocation and redesign of the approved project in order to protect the onsite wetlands. See Section D, *Environmentally Sensitive Habitat and Wetlands*, of this report for a detailed analysis of the wetlands protection policies as well as the requirements to avoid unconstitutional taking of private property for public use. Significantly, the residential development footprint must be relocated and/or redesigned to achieve an additional 5-foot setback from the edge of the wetland boundary as delineated in the 1997 FLx report (Exhibit 7).

As described in Section D, the Commission must consider Section 30010, and the Supreme Court decision in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 112 S.Ct. 2886. Section 30010 of the Coastal Act provides that the Coastal Act shall not be construed as authorizing the Commission to exercise its power to grant or deny a permit in a manner which will take private property for public use. Application of Section 30010 may overcome the presumption of denial in some instances. The subject of what government action results in a “taking” was addressed by the U.S. Supreme Court in *Lucas v. South Carolina Coastal Council*. In *Lucas*, the Court identified several factors that should be considered in determining whether a proposed government action would result in a taking. The subject properties are zoned for residential use and the applicants have some expectation to pursue economically viable residential use of the parcels. However, the level of residential development that would provide the minimum economically viable use of the property is not defined.

To ensure that the applicants receive an economically viable use of their property while meeting the 5-foot wetland setback described in Special Condition One, the Commission finds that the applicants have additional alternatives with respect to relocation or redesign of the project. The Commission finds that to provide a reasonable use of the property and maximum feasible protection of wetlands, the front yard setbacks may be reduced to three feet on Parcel 22 and five feet on Parcel 23, and the side yard setbacks may be eliminated. The Commission approves these changes pursuant to the variance provisions in Section 35-173 of the Coastal Zoning Ordinance. Furthermore the Commission finds that to provide a reasonable use of the property and maximum feasible protection of wetlands, the applicants may gain additional square footage by constructing a 100% second story development over the groundfloor development, rather than the 75% approved by the County.

The applicants proposed a two-story 1,800 sq. ft. residence on each parcel. As approved by the County the applicants would receive approximately 1,412 sq. ft. of development on Parcel 22 and 1,620 sq. ft. of development on Parcel 23, including garage or carport. With the five-foot wetland setback as required by Special Condition 1, the development would be reduced to approximately 1,298 sq. ft. on Parcel 22 and increased to approximately 1,744 sq. ft. on Parcel 23 if the applicant is permitted to build a full second story (100 % coverage compared to 75% previously allowed by the

County). Additional living area may be obtained by reducing the front yard setback and/or eliminating the sideyard setbacks. As shown in Exhibit 8, the maximum buildout potential given the 5-foot wetland setback requirement, with reduction of the front yard setbacks and elimination of sideyard setbacks, is approximately 1,544 sq. ft. of total development on Parcel 22 and approximately 2,712 sq. ft. on Parcel 23.

Approval of a variance to eliminate the side yard setback between structures, allows development more closely resembling a duplex. The LCP base zone district allows only one single-family dwelling per lot, and not duplexes. A duplex at this location may be considered inconsistent with the community character of the single-family residential zone district.

Because the lots are zoned for one single family dwelling (SFD) per lot and, even with no setback between the structures, *only* one SFD would be permitted on each parcel, then the Commission finds that the lack of a setback is limited to a community character issue and is not inconsistent with the requirements of the base zone district. Furthermore, the elimination of side yard setbacks between structures has been feasibly implemented under similar circumstances further downcoast on the Isla Vista blufftop. In December 2000, the County approved the construction of two single family residences on two adjacent 7,000 square foot bluff top lots on Del Playa Drive that are zoned for multiple residential (99-CDP-046 and 99-CDP-047). The two approved structures were each 25 feet in height and 2,093 square feet in size, with a 293 square foot attached garage. A side yard setback variance was granted for each structure, creating a zero side yard setback between the structures. Although the variances resulted in the appearance of a duplex development, the structures are two individual single-family residences.

The Commission finds that there is a range of alternatives within the maximum development footprint (Exhibit 8) that would provide for reasonable development of the property. These alternatives will provide similar outdoor/indoor living space similar to nearby single-family residential development, which according to the County's findings, which "ranges from 1,300 to 2,100 square feet of living space." In addition to the various setback modifications, the Commission finds that to provide a reasonable use of property, the parking area may be in the form of a garage rather than a carport and the applicants may redesign their project to have a roof top deck provided that the maximum height limit of 25 feet is not exceeded.

All of these measures will contribute to the further detriment of visual resources. And, as noted above, the LCP policies cannot be fully applied in these circumstances in order to implement wetland protection measures while allowing reasonable development of the property. It is important to note, however, that the majority of visual impact will be to private views, rather than public views. Though the development will be visually imposing, the public will have the ability to bypass the development and access the open space and bluff top path. Additionally the lots are each 40 feet wide and ocean through-view corridors are present immediately east and west of the properties. The

visually intimidating structures will briefly interrupt public views from the road but are not substantially out of character with the existing built-out Del Playa bluff top.

Therefore, the Commission concludes that adverse impacts to wetland resources would be more significant than the impact to visual resources and that the proposed project as modified, is most protective of coastal resources consistent with Section 30010 of the Coastal Act.

## **F. WATER QUALITY**

LCP Policy 1-1, incorporating Section 30231 of the Coastal Act states:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, minimizing alteration of natural streams.*

LCP Policy 3-14 states:

*All development shall be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions and be oriented so that grading and other site preparations is kept to an absolute minimum. Natural features, landforms, and native vegetation, such as trees, shall be preserved to the maximum extent feasible. Areas of the site which are not suited for development because of known soil, geologic, flood, erosion or other hazards shall remain in open space.*

LCP Policy 3-16 states:

*Sediment basins (including debris basins, desilting basins, or silt traps) shall be installed on the project site in conjunction with the initial grading operations and maintained throughout the development process to remove sediment from runoff waters. All sediment shall be retained on site unless removed to an appropriate dumping location.*

LCP Policy 3-17 states:

*Temporary vegetation, seeding, mulching, or other suitable stabilization method shall be used to protect soils subject to erosion that have been disturbed during grading or development. All cut and fill slopes shall be stabilized immediately with planting of native grasses and shrubs, appropriate nonnative plants, or with accepted landscaping practices.*

LCP Policy 3-18 states:

*Provisions shall be made to conduct surface water to storm drains or suitable watercourses to prevent erosion. Drainage devices shall be designed to accommodate increased runoff resulting from modified soil and surface conditions as a result of development. Water runoff shall be retained on-site whenever possible to facilitate groundwater recharge.*

LCP Policy 3-19 states:

***Degradation of the water quality of groundwater basins, nearby streams, or wetlands shall not result from development of the site. Pollutants, such as chemicals, fuels, lubricants, raw sewage, and other harmful waste, shall not be discharged into or alongside coastal streams or wetlands either during or after construction.***

As described previously, the County's approved coastal development permits for the construction of two-story, single-family residences on two adjacent bluff top lots. According to the County's project description, each structure may be a maximum of 25 feet in height. On Parcel 22, the CDP approved construction of a 1,012 sq. ft. single-family dwelling & 400 sq. ft. carport. Variances from setback standards were granted on Parcel 22 to avoid fill of designated wetlands, allowing the structure to be built with a 5-foot front yard setback, an eliminated western boundary setback, and a three-foot eastern side yard setback. On Parcel 23, the CDP approved construction of a 1,220 sq. ft. single-family dwelling, 400 sq. ft. carport, and 216 sq. ft. of first floor deck area. Variances from setback standards were also granted on Parcel 23 to avoid fill of designated wetlands, allowing the structure to be built with a 12-foot front yard setback, a 2-foot western side yard setback, and a standard 5-foot eastern side yard setback. The County's approved projects ensured that the development footprint of all structures would be located at the northern end of the parcel, entirely outside of the delineated wetland area.

The proposed development will result in an increase in impervious surfaces, which in turn may decrease the infiltrative function and capacity of existing permeable land on sites. The reduction in permeable space therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the sites. Further, pollutants commonly found in runoff associated with residential use include petroleum hydrocarbons such as oil and grease from vehicles, heavy metals, synthetic organic chemicals such as paint and household cleaners, soap and dirt from the washing of vehicles, dirt and vegetation from yard maintenance, litter, fertilizers, herbicides, pesticides, and bacteria and pathogens from animal waste. The discharge of these pollutants into coastal waters can cause cumulative impacts such as eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms, leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes; reduce optimum populations of marine organisms; and have adverse impacts on human health.

Therefore, in order to find the proposed development consistent with the water and marine resource policies of the LCP, the Commission finds it necessary to require the incorporation of Best Management Practices (BMPs) designed to control the volume, velocity, and pollutant load of stormwater leaving the developed sites. Critical to the successful function of post-construction structural BMPs in removing pollutants in



stormwater to the Maximum Extent Practicable (MEP), is the application of appropriate design standards for sizing BMPs. The majority of runoff is generated from small storms because most storms are small. Additionally, storm water runoff typically conveys a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs for the small, more frequent storms, rather than for the large infrequent storms, results in improved BMP performance at lower cost.

For design purposes, post-construction structural BMPs (or suites of BMPs) should be designed to treat or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs. The Commission finds that sizing post-construction structural BMPs to accommodate (filter or treat) the runoff from the 85<sup>th</sup> percentile storm runoff event, in this case, is equivalent to sizing BMPs based on the point of diminishing returns (i.e. the BMP capacity beyond which, insignificant increases in pollutants removal (and hence water quality protection) will occur, relative to the additional costs. Therefore, the Commission requires the applicants to submit final drainage and runoff plans including selected post-construction structural BMPs which shall be sized based on design criteria specified in **Special Condition Nine (9)**, and finds this will ensure the proposed developments will be designed to minimize adverse impacts to coastal resources, in a manner consistent with the water and marine policies of the Coastal Act.

Furthermore, interim erosion control measure implemented during construction will serve to minimize the potential for adverse impacts to water quality resulting from drainage runoff during construction and in the post-development stage. Therefore, the Commission finds that **Special Condition Ten (10)** is necessary to ensure the proposed development will not adversely impact water quality or coastal resources, consistent with the County's LCP, including Policies 3-14, 3-16, 3-17, 3-18, and 3-19 and Section 30231 of the Coastal Act, incorporated into the LCP.

Additionally, to ensure that inadvertent impacts to water quality and the adjacent wetlands do not result from the construction of the proposed development, **Special Condition Twelve (12)** outlines the applicants' responsibilities including parameters for placement and storage of construction materials, debris, or waste to ensure that it will not be subject to erosion nor degrade wetland habitat. Special Condition 12 also requires that any and all debris resulting from construction activities shall be removed from the site on the same day. Equipment shall not be operated or stored south of the rear yard fencing. Additionally, during construction, washing of concrete trucks, paint, equipment, or similar activities shall occur only in areas where polluted water and materials can be contained for subsequent removal from the site. Wash water shall not be discharged to the storm drains, street, drainage ditches, creeks, or wetlands. Areas designated for washing functions shall be at least 100 feet from any storm drain, water body or sensitive biological resources. The location(s) of the washout area(s) shall be clearly noted at the construction site with signs. In addition, construction materials and

waste such as paint, mortar, concrete slurry, fuels, etc. shall be stored, handled, and disposed of in a manner which prevents storm water contamination.

Therefore, the Commission finds that, as conditioned, the proposed development will meet the water quality and watershed protection policies of the County's LCP and Section 30210 of the Coastal Act.

## **G. CEQA**

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Commission finds that, the proposed project, as conditioned will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.